Petition

81-538

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NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER 1981 TERM

WARREN G. WELLS, SR., PETITIONER

V.

SIDNEY J. BROWN, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR CERTIORARI

WARREN G. WELLS,SR.,PRO SE
PO BOX 36552
HOUSTON, TEXAS 77236-6552
713-227-0149

QUESTIONS PRESENTED FOR REVIEW

I.

MAY A STATE COURT JUDGE, CONSISTENT WITH DUE PROCESS, HEAR LITIGATION WHEREIN THE STATE COURT JUDGE HAS AN IMMEDIATE AND DIRECT FINANCIAL INTEREST (BRIBERY)?

II.

MAY A STATE COURT JUDGE, CONSISTENT WITH DUE PROCESS, ACT AS BOTH JUDGE AND ATTORNEY FOR ONE OF THE PARTIES IN THE LAWSUIT THE STATE COURT JUDGE IS TRYING, AT THE SAME TIME IN THE SAME LAWSUIT?

III.

DOES THE STATE OF TEXAS, OR A STATE COURT JUDGE ACTING FOR THE STATE OF TEXAS, HAVE AUTHORITY TO DENY EQUALITY UNDER THE LAWS AND DUE PROCESS RIGHTS BECAUSE A STATE COURT LITIGANT IS A FEDERAL BANKRUPT?

IV.

IS A FUNDAMENTAL JURISDICTIONAL ERROR CONSTITUTED BY A STATE COURT JUDGE

STRUCTURING LITIGATION SO THAT ONE OF THE PARTIES IS PRECLUDED FROM PRESENTING EVIDENCE ON THE MATTER IN CONTROVERSY?

V.

MUST CLAIMS MADE PURSUANT TO RELIEF STATUTES 28 USC 1983 AND 28 USC 1985 BE STATED WITH PARTICULARITY?

VI.

IS EQUITABLE RELIEF PURSUANT TO 28 USC 1983 AND 28 USC 1985 AND DECLARATORY RELIEF PURSUANT TO 28 USC 2201; 2202, AVAILABLE IN FEDERAL COURT?

VII.

MAY AN ACTION CHARGING CONSPIRACY TO DENY CIVIL RIGHTS AS SECURED BY THE UNITED STATED CONSTITUTION, AS AMENDED, BE MAINTAINED IN FEDERAL COURT?

VIII.

IS AN ACTION MAINTAINABLE IN FEDERAL COURT PURSUANT TO RELIEF STATUTES 28 USC 1983 AND 28 USC 1985 FOR NAME CLEARING "BECAUSE OF

WHAT THE GOVERNMENT IS DOING" TO THE PLAINTIFF IN SUCH AN ACTION?

IX.

MAY A CONSPIRACY TO DENY CIVIL RIGHTS AS SECURED BY THE CONSTITUTION OF THE UNITED STATES, AS AMENDED, ENGAGED IN BY A STATE COURT JUDGE, BE PROPERLY CLASSIFIED AS A "JUDICIAL ACT"?

X.

IS THE ANNOUNCEMENT TO THE JURY, IN A STATE COURT LAWSUIT THAT A LITIGANT'S ATTORNEY IS OF THE JEWISH RELIGION, IN ORDER TO PREJUDICE THAT JURY AGAINST THAT LITIGANT, A VIOLATION OF DUE PROCESS?

XI.

CONSISTENT WITH DUE PROCESS, IS A RELIGIOUS TEST PERMISSIBLE IN STATE COURT LITIGATION OF THE JURORS BEFORE THE SUBJECT JURORS ARE PERMITTED TO SERVE AS JURORS?

XII.

CONSISTENT WITH DUE PROCESS, MAY A STATE COURT RECEIVER MAKE JUDICIAL DETERMINATIONS,

UNDER COLOR OF LAW, AFFECTING THE PROPERTY AND LIBERTY RIGHTS OF LITIGANTS AS SUCH RIGHTS ARE SECURED TO THE LITIGANTS BY THE CONSTITUTION OF THE UNITED STATES, AS AMENDED?

XIII.

MAY THE STATE OF TEXAS, OR ITS JUDICIAL OFFICERS, ACTING UNDER COLOR OF LAW, DENY ACCESS TO THE STATE COURTS BASED SOLELY UPON A LITIGANT'S INABILITY TO PAY APPEAL COSTS AND FURNISH AN APPEAL BOND?

XIV.

IS SEX DISCRIMINATION, WITHOUT JUSTIFIABLE BASIS, IMPOSED UPON MALES BY THE STATE OF TEXAS, WHERE THE SAME REQUIREMENTS ARE NOT IMPOSED UPON FEMALES UNDER THE EXACT SAME CIRCUMSTANCES MAINTAINABLE IN FEDERAL COURT PURSUANT TO 28 USC 1983?

XV.

MAY A STATE COURT JUDGE, CONSISTENT WITH THE FIRST AMENDMENT TO THE UNITED STATES

CONSTITUTION, ENJOIN, WITHOUT PLEADINGS THEREFOR, THE PARTIES IN STATE COURT LITIGATION FROM COMMUNICATING WITH EACH OTHER IN ANY MANNER WHATSOEVER DURING THE ENTIRE COURSE OF THE LITIGATION (4 YEARS)?

INTERESTED PARTIES

WARREN G. WELLS, SR., HOUSTON, TEXAS,

SIDNEY J. BROWN, RICHMOND, TEXAS,

LOGENE FOSTER, SUGAR LAND, TEXAS,

MARY A. WELLS, HOUSTON, TEXAS,

E. J. MEAUX, RICHMOND, TEXAS,

IRENE WLECZYK, RICHMOND, TEXAS,

JAMES S. WHITWORTH, RICHMOND, TEXAS,

C. D. MCDOWELL, SUGAR LAND, TEXAS,

BETTY M. MCDOWELL, SUGAR LAND, TEXAS,

LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON, WHICH MAY NOW BE KNOWN BY ANOTHER NAME, BUT WHICH INFORMATION MUST BE FURNISHED BY THAT PARTY SINCE SAME IS OUTSIDE THE KNOWLEDGE OF PETITIONER.

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REFERENCE TO THE OPINIONS OF THE COURTS BELOW

FINAL JUDGMENT OF DISMISSAL OF COMPLAINT, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS (APPENDIX, PAGE 136);

OPINION SUPPORTING FINAL JUDGMENT OF DISMISSAL OF COMPLAINT, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS (APPENDIX, PAGE 138);

OPINION AFFIRMING JUDGMENT OF DISTRICT COURT, UNITED STATES COURT OF APPEALS, FOR THE FIFTH CIRCUIT (APPENDIX, PAGE 147);

DENIAL OF PETITION FOR REHEARING, UNITED STATES COURT OF APPEALS, FOR THE FIFTH CIRCUIT (APPENDIX, PAGE 157);

DENIAL OF PETITION FOR REHEARING EN BANC, UNITED STATES COURT OF APPEALS, FOR THE FIFTH CIRCUIT (APPENDIX, PAGE 158).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED

THE JUDGMENT OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS OF WHICH REVIEW IS SOUGHT IS DATED MAY 20, 1981 AND WAS ENTERED ON THAT DATE (APPENDIX, PAGE 147);

REHEARING WAS DENIED BY THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS BY ORDER DATED JUNE 18, 1981 AND ENTERED ON THAT DATE (APPENDIX, PAGE 157);

PETITIONER CONTENDS THAT JURISDICTION OF THE SUPREME COURT IS CONFERRED TO REVIEW THE AFORESAID JUDGMENT OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS BY 28 USC 1254 (1).

PETITIONER MAINTAINS THAT THE JUDGMENT OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS, OF WHICH REVIEW IS SOUGHT, IS IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS, AND THAT SAID

JUDGMENT IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THE UNITED STATES SUPREME COURT, AS SET OUT IN THE ARGUMENT BELOW.

FURTHERMORE, IT IS RESPECTFULLY CONTENDED THAT THE JUDGMENT OF WHICH REVIEW IS SOUGHT BY THE UNITED STATES SUPREME COURT IS IN CONFLICT WITH OTHER DECISONS OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS, AS IS SET OUT IN THE ARGUMENT BELOW.

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STATEMENT OF THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

THE COMPLAINT IN THE FEDERAL DISTRICT COURT RESULTED FROM A "NO FAULT" STATE COURT DIVORCE ACTION, WHERE AS ALLEGED IN THE COMPLAINT:

THE STATE COURT JUDGE, ACTED AS BOTH JUDGE AND ATTORNEY, FOR PETITIONER'S WIFE, AT THE SAME TIME IN THAT DIVORCE ACTION.

THE STATE COURT JUDGE GAVE ADVICE TO HIS "CLIENT" DURING THE ENTIRE COURSE (4 YEARS) OF THE DIVORCE PROCEEDINGS, IN ORDER TO PRECLUDE PETITIONER FROM GETTING ANY OF THE MARITAL COMMUNITY ASSETS, ACCORDING TO AGREEMENT IN CONSPIRACY.

THE ADVICE GIVEN TO HIS "CLIENT" BY THE STATE COURT JUDGE WAS ACTED UPON BY PETITIONER'S WIFE AND DID SERVE THE PURPOSE OF PRECLUDING PETITIONER FROM GETTING THE SUBJECT ASSETS, AS WELL AS FORCING PETITIONER INTO DESTITUTION AND

BANKRUPTCY.

THE STATE COURT JUDGE HAD A DIRECT AND IMMEDIATE FINANCIAL INTEREST (BRIBERY) IN THE LAWSUIT HE WAS TRYING AS JUDGE.

THERE WAS A CONSPIRACY TO DENY CIVIL RIGHTS, AS THOSE RIGHTS ARE SECURED TO PETITIONER BY THE UNITED STATES CONSTITUTION, AS AMENDED, CONTINUING FROM ON OR BEFORE JANUARY 30, 1976 TO JANUARY 4, 1980 AND THEREAFTER, ENGAGED IN BY THE PARTIES NAMED IN THE COMPLAINT, AS FILED IN THE DISTRICT COURT.

THE CONSPIRATORIAL OBJECT BEING TO DIVIDE AMONG THE CONSPIRATORS PETITIONER'S SHARE OF THE MARRIAGE ESTATE COMMUNITY ASSETS, WHICH WAS ACCOMPLISHED, LEAVING PETITIONER BANKRUPT, DESTITUTE AND A PAUPER, UNABLE TO AFFORD THE FEES AND COSTS OF APPEAL IN THE STATE COURTS, AS WAS PART OF THE PLAN.

IMMEDIATELY PRIOR TO THE SUBJECT

STATE COURT ACTION, PETITIONER HAD A SIX FIGURE NET WORTH, LIVING IN ONE OF THE FINEST OF SUB-DIVISIONS WITHOUT OVERDUE OR PAST DUE DEBTS.

PETITIONER'S WIFE, ACCORDING TO THE AGREEMENT IN CONSPIRACY, RECEIVED FREE AND CLEAR OF ANY OF PETITIONER'S CLAIMS, ALL THAT TO WHICH PETITIONER PREVIOUSLY HAD A COMMUNITY OR SEPARATE PROPERTY CLAIM.

FURTHERING THE CONSPIRATORIAL OBJECTS, AFORESAID, THE STATE COURT JUDGE APPOINTED A RECEIVER FOR PETITIONER'S ESTATE, BUT NOT FOR THOSE ASSETS LEFT IN CONTROL OF PETITIONER'S WIFE, DELEGATING JUDICIAL POWER TO THAT RECEIVER, AS TO PETITIONER'S ESTATE ONLY, THEREBY PERMITTING DISTRIBUTION OF PETITIONER'S MONEY AND PROPERTY TO THE OTHER CONSPIRATORS FOR VARIOUS WRONGFUL PURPOSES BY THE RECEIVER WITHOUT PRIOR JUDICIAL APPROVAL, OR APPROVAL IMMEDIATELY AFTER THE ACTION WAS TAKEN.

SUCH JUDICIAL APPROVAL AS WAS HAD WAS ENTERED MORE THAN ONE YEAR AFTER DEPRIVATION OF PETITIONER'S PROPERTY BY THE RECEIVER, AND DISPOSITION OF PETITIONER'S PROPERTY AND MONEY IN NON-RECOVERABLE MANNERS IN COOPERATION WITH THE CONSPIRATORS.

THE RECEIVER TOOK PETITIONER'S HOMESTEAD, WITHOUT PRIOR JUDICIAL APPROVAL, BY BREAK-IN AND LOCK-OUT, LOCKING PETITIONER AWAY FROM HIS PERSONAL POSSESSIONS WITHOUT NOTICE THAT SUCH LOCK-OUT WAS TO BE UNDERTAKEN. MANY OF PETITIONER'S LIFE-LONG PERSONAL POSSESSIONS WERE LOST TO PETITIONER, BEING DESTROYED AS "TRASH" (OR ELSE TAKEN BY THE CONSPIRATORS) AND FOR WHICH "TRASH" HAULING THE RECEIVER TOOK PART OF THE FUNDS BELONGING TO PETITIONER.

THE STATE COURT RECEIVER, UNDER COLOR OF LAW, AMONG MANY OTHER WRONGFUL

ACTS, PAID TO THE MORTGAGE HOLDER OF PETITIONER'S HOMESTEAD MORE THAN $20,000. MORE THAN THAT MORTGAGE HOLDER COULD BE ENTITLED TO UNDER ANY PROPER CIRCUMSTANCES.

THE MORTGAGE HOLDER DID NOT INTERVENE IN THE DIVORCE PROCEEDINGS, NOR DID THAT MORTGAGE HOLDER FORECLOSE UNDER THE DEED OF TRUST. ONE OF THOSE ACTIONS WOULD HAVE BEEN REQUIRED OF THE MORTGAGE HOLDER, BUT NEITHER WAS TAKEN. THE RECEIVER, UNDER COLOR OF LAW, USING HIS STATE RECOGNIZED POSITION, BUT OUTSIDE HIS JURISDICTION, MADE THE JUDICIAL DETERMINATION AS TO THE AMOUNT DUE AND DISPOSED OF THAT AMOUNT WITHOUT PRIOR JUDICIAL APPROVAL, OR JUDICIAL APPROVAL IMMEDIATELY AFTER THE TAKING OF SUCH ACTION.

MORE THAN ONE YEAR LATER, ON JANUARY 11, 1979, ALTHOUGH THE RECEIVER HAD TAKEN PETITIONER'S HOMESTEAD BY BREAK IN AND LOCK OUT, AS AFORESAID, THE STATE

COURT JUDGE FINED PETITIONER MORE THAN $10,000.00 (WITHOUT PROVISIONS FOR PURGING) BECAUSE PETITIONER DID NOT SURRENDER PETITIONER'S HOMESTEAD TO THE RECEIVER SOME TWO YEARS PRIOR TO THE CONTEMPT FINE.

THE CONTEMPT FINE WAS IMPOSED OUTSIDE THE PRESENCE OF PETITIONER, WHO HAD NOT BEEN NOTICED OF A CONTEMPT HEARING, AND THE FINE OF $10,000.00 EXCEEDS THE AMOUNT ALLOWED BY STATUTE WHICH IS $500.00.

PETITIONER HAD NO OPPORTUNITY TO CONTROVERT THOSE CONTEMPT CHARGES MADE AGAINST PETITIONER, WHICH ARE HERE DENIED AS BEING WITHOUT FOUNDATION IN FACT OR LAW. THE PURPOSE OF THE CONTEMPT FINE WAS, AS STATED IN THE ORDER, TO <u>REDRESS PRIVATE INJURY</u>, WHICH IS CONTRARY TO TEXAS LAW, AND THE AMOUNT OF THE FINE WAS NOT PAID TO THE COUNTY OR STATE TREASURY AS WOULD BE REQUIRED IN A PROPER CASE. THE TRUE

OBJECT OF THE CONTEMPT FINE WAS TO DIVEST PETITIONER OF HIS ASSETS AND TRANSFER THOSE ASSETS TO THE CONSPIRATORS ACCORDING TO THE CONSPIRATORIAL OBJECT AFORESAID.

TO FURTHER THE CONSPIRACY, WITHOUT PLEADINGS THEREFOR, THE STATE COURT JUDGE ENJOINED PETITIONER FROM COMMUNICATING WITH PETITIONER'S WIFE IN ANY MANNER WHATSOEVER DURING THE PENDENCY OF THE PROCEEDINGS (4 YEARS).

THE STATE COURT JUDGE, IN CO-OPERATION WITH THE OTHER CONSPIRATORS, FORCED PETITIONER INTO BANKRUTPCY BY GIVING ALL THE COMMUNITY AND BUSINESS ASSETS TO PETITIONER'S WIFE, WITHOUT TRIAL ON THE MERITS, LEAVING PETITIONER WITH ALL THE COMMUNITY DEBTS AND NO WAY TO PAY THEM.

THEREAFTER, THE STATE COURT JUDGE WOULD NOT ALLOW PETITIONER TO TAKE THE DEPOSITION OF PETITIONER'S WIFE, BECAUSE

"PETITIONER WAS A BANKRUPT" AND MAY NOT BE ABLE TO PAY ANY COURT REPORTER WHO MAY TAKE THE DEPOSITION. THIS DENIAL WAS CONTINUED EVEN AFTER PETITIONER'S ATTORNEY OFFERED TO GUARANTEE THE FEE OF ANY COURT REPORTER WHO TOOK THE DEPOSITION. THE REFUSAL TO ALLOW THE TAKING OF THIS DEPOSITION FURTHERED THE CONSPIRACY, AND SERVED THE FURTHER PURPOSE OF PUNISHING PETITIONER FOR HAVING DECLARED BANKRUPTCY, AND THE CONSEQUENT TAKING OF JURISDICTION OF THE PETITIONER'S ESTATE FROM THE DIVORCE COURT, ALTHOUGH PETITIONER HAD NO CHOICE AS A RESULT OF THE CONSPIRATORS ACTIONS.

A JURY TRIAL WAS HAD, BUT AT THE TIME OF THE TRIAL THE STATE COURT DID NOT HAVE JURISDICTION OF PETITIONER'S ESTATE, THE JURISDICTION OF THAT ESTATE BEING IN THE BANKRUPCY COURT.

AT TRIAL, AMONG MANY, MANY OTHER DENIALS OF DUE PROCESS:

PETITIONER WAS NOT ALLOWED ANY WITNESSES, WHEREAS PETITIONER'S WIFE WAS ALLOWED WITNESSES;

PETITIONER WAS NOT ALLOWED TO VIEW ANY OF THE EVIDENCE IN POSSESSION OF PETITIONER'S WIFE, PRIOR TO TRIAL;

PETITIONER WAS NOT ALLOWED ADMISSION OF EVIDENCE ON THE SAME MATTERS WHERE PETITIONER'S WIFE WAS ALLOWED THE ADMISSION OF EVIDENCE;

NO MOTIONS (DURING THE TRIAL AND DURING THE ENTIRE 4 YEARS) WERE EVER GRANTED AS MADE BY PETITIONER'S ATTORNEY BUT ALL MOTIONS WERE GRANTED AS MADE BY PETITIONER'S WIFE'S ATTORNEY;

A RELIGIOUS TEST WAS ADMINISTERED TO EACH PROSPECTIVE JUROR AND ALL MEMBERS OF THE JEWISH RELIGION WERE EXCLUDED FROM SERVICE ON THE JURY;

ON TWO SEPARATE OCCASIONS THE STATE COURT JUDGE ANNOUNCED TO THE NON-

JEWISH JURY THAT PETITIONER'S ATTORNEY WAS OF THE JEWISH RELIGION, WITH DETAILED QUESTIONS CONCERNING THE SUBJECT JEWISH HIGH HOLY DAYS, IN ORDER TO PREJUDICE THAT JURY AGAINST PETITIONER;

CERTAIN HEARINGS WERE CONDUCTED IN THE NATURE OF CHILDREN'S GAMES, WHERE PETITIONER WAS HARASSED, RIDICULED AND LAUGHED AT;

ALTHOUGH THERE WAS IN THE FILE AN UNCONTESTED AFFIDAVIT IN FORMA PAUPERIS AND THE JURY AT TRIAL FOUND THAT PETITIONER HAD "ZERO" CASH ASSETS, THE STATE COURT JUDGE, TO PUNISH PETITIONER, AS AFORESAID, AND TO SECURE THE TAKING OF PETITIONER'S MONEY AND PROPERTY, WITHOUT EVIDENCE TO CONTROVERT PETITIONER'S AFFIDAVIT IN FORMA PAUPERIS, AT THE REQUEST ONLY OF ONE OF THE CONSPIRATORS, NOT UNDER OATH, HELD THAT PETITIONER DID HAVE THE FUNDS WITH WHICH TO APPEAL, AND ACCORDINGLY, THE APPEALS

COURT DISMISSED PETITIONER'S STATE COURT APPEAL FOR LACK OF JURISDICTION.

THE DISMISSAL OF THE STATE COURT APPEAL WAS BASED SOLELY UPON THE INABILITY OF PETITIONER TO PAY THE COSTS AND FURNISH AN APPEAL BOND. PETITIONER HAD DONE ALL THAT WAS NECESSARY TO OTHERWISE PERFECT THE STATE COURT APPEAL. PETITIONER'S INABILITY TO SECURE THE COSTS AND APPEAL BOND, AND THE CONTRARY HOLDING BY THE CONSPIRATOR STATE COURT JUDGE, AFORESAID, DEFEATED STATE COURT APPEAL.

THE STATE OF TEXAS, THROUGH THOSE BEARING ITS AUTHORITY, HAD TAKEN AWAY THAT MONEY WHICH THE STATE OF TEXAS REQUIRES OR ELSE IT WILL NOT PERMIT APPEAL IN THE STATE COURTS.

THE CONSPIRATORS BY THEIR OWN ACTIONS HAD MADE THEIR POSITION SECURE, WITH THE HELP OF THE STATE OF TEXAS, IN THE TAKING OF PETITIONER'S MONEY AND PROPERTY.

THE CONSPIRATORS SAW TO IT THAT THE TRANSCRIPT OF THE PROCEEDINGS WAS NEVER PREPARED, AND ATTEMPTED TO GET PETITIONER TO WAIVE PETITIONER'S RIGHTS TO THE MONEY AND PROPERTY THAT HAD BEEN WRONGFULLY TAKEN.

INVIDIOUS DISCRIMINATORY ANIMUS WAS ALLEGED IN THE COMPLAINT IN THE DISTRICT COURT.

PETITIONER, IN THE COMPLAINT IN THE DISTRICT COURT, HAS ASSERTED THAT SECTION 3.59 OF THE TEXAS FAMILY CODE LEGISLATES UNCONSTITUTIONAL SEX DISCRIMINATION, AS THAT SECTION WAS APPLIED TO PETITIONER, IN THE PROVISION "IF HE IS UNABLE TO SUPPORT HIMSELF" WITHOUT SIMILAR REQUIREMENT BEING MADE OF FEMALES, AS TO SUPPORT FROM COMMUNITY ASSETS DURING THE PENDENCY OF TEXAS DIVORCE PROCEEDINGS.

THE STATE COURT JUDGE WAS SUED AND SERVED BOTH IN HIS OFFICIAL POSITION AND INDIVIDUALLY. THE STATE OF TEXAS HAS

APPEARED IN THE DISTRICT COURT TO DEFEND THAT STATE COURT JUDGE IN BOTH THE OFFICIAL POSITION AND INDIVIDUALLY. ADDITIONALLY, THE STATE OF TEXAS HAS APPEARED IN THE FIFTH CIRCUIT COURT OF APPEALS TO DEFEND AGAINST THE CHALLENGE BY PETITIONER THAT THE STATE OF TEXAS MAY NOT DEFEND ONE WHO HAS VIOLATED THE CONSTITUTION OF THE UNITED STATES AND WHO IS DISQUALIFIED BY THE CONSTITUTION OF THE STATE OF TEXAS.

AN ATTORNEY AT LAW, WHO FURTHERED THE CONSPIRACY BY LETTER SPECIFICALLY CITED IN THE COMPLAINT AND WHO OBVIOUSLY WILL BE CALLED AS A WITNESS AND IS ACCORDINGLY DISQUALIFIED UNDER ARTICLE 12, SECTION 8, OF DR 5-101, TEXAS BAR RULES HAS APPEARED IN BOTH THE DISTRICT COURT AND FIFTH CIRCUIT COURT OF APPEALS TO REPRESENT A PARTY DEFENDANT.

PETITIONER'S WIFE FILED AN ANSWER IN THE DISTRICT COURT WHEREIN SHE FAILED

TO DENY RECEIVING ADVICE FROM THE STATE COURT JUDGE, AND FAILED TO DENY THE CONSPIRACY AS CHARGED IN THE COMPLAINT.

JURISDICTION WAS ASSERTED IN THE COMPLAINT UNDER AUTHORITY OF (APPENDIX, PAGES 67 AND 68):

THE CONSTITUTION OF THE UNITED STATES AND THE FIRST, FOURTH, SEVENTH, EIGHTH AND FOURTEENTH AMENDMENTS THERETO;

28 USC 1331, AS TO FEDERAL QUESTIONS;

28 USC 1334, AS TO BANKRUPTCY MATTERS;

28 USC 1343 (1),(2),(3) AND (4), AS TO CIVIL RIGHTS MATTERS;

RELIEF WAS DEMANDED PURSUANT TO:

42 USC 1983 AND 42 USC 1988 AS TO CIVIL RIGHTS MATTERS;

42 USC 1985 (2), (3) AS TO CLASS BASED CIVIL RIGHTS MATTERS; 28 USC 2201; 2202, AS TO DECLARATORY RELIEF.

ARGUMENT

QUESTION I.
MAY A STATE COURT JUDGE, CONSISTENT WITH DUE PROCESS, HEAR LITIGATION WHEREIN THE STATE COURT JUDGE HAS AN IMMEDIATE AND DIRECT FINANCIAL INTEREST (BRIBERY)?

THE FIFTH CIRCUIT IN ITS OPINION (APPENDIX PAGE 147) STATED AS FOLLOWS:

"THE SEVENTH CIRCUIT IN LOPEZ V. VANDERWATER, 620 F.2D 1229, 1234 & N.9 (7TH CIR.) CERT. DISMISSED, _____U.S._____ 101 S.CT. 601, _____L.ED.2D_____(1980), RECENTLY POINTED OUT THAT A JUDGE WHO HAS AN INTEREST IN A CASE IS NOT DEPRIVED OF JURISDICTION."

PETITIONER RESPECTFULLY SHOWS THAT THE HOLDING IN LOPEZ UPON WHICH THE FIFTH CIRCUIT RELIES IS DISTINGUISHED FROM THE PRESENT CASE SINCE JUDGE VANDERWATER ONLY VIOLATED THE RULES OF THE ILLINOIS SUPREME COURT, AND SUCH VIOLATION WAS FOUND NOT TO HAVE DEPRIVED THE JUDGE OF ALL JURISDICTION.

THE PRESENT CASE DEALS WITH A TEXAS

CONSTITUTIONAL PROHIBITION AGAINST A JUDGE SITTING IN A CASE WHEREIN HE IS INTERESTED:

> "DISQUALIFICATION OF JUDGES;... SECTION 11. NO JUDGE SHALL SIT IN ANY CASE WHEREIN HE MAY BE INTERESTED.." (APPENDIX, PAGE 163).

WHILE JUDGE VANDERWATER COULD BE DISCIPLINED BY THE ILLINOIS SUPREME COURT FOR VIOLATING THE RULES OF THAT COURT, HE WOULD NOT HAVE BEEN DISQUALIFIED FROM SITTING AS JUDGE IN THE PARTICULAR CASE, IN THE FIRST PLACE, AS WAS JUDGE SIDNEY J. BROWN.

THE COMPLAINT IN PETITIONER'S CASE (APPENDIX, PAGE 103) SPECIFICALLY CHARGED JUDGE BROWN WITH HAVING AN IMMEDIATE AND DIRECT FINANCIAL INTEREST IN THE OUTCOME OF CAUSE 30,035.

THE UNITED STATES SUPREME COURT IN NUMEROUS INSTANCES HAS HELD THAT:

> "...IT IS SUFFICIENTLY CLEAR FROM OUR CASES THAT THOSE WITH SUBSTANTIAL PECUNIARY INTEREST IN LEGAL PROCEEDINGS SHOULD "

"NOT ADJUDICATE THESE DISPUTES.."
GIBSON V. BERRYHILL, 93 S.CT. 1689 (1973).

THE SUPREME COURT IN MARSHALL V. JERRICO, INC., 100 S.CT. 1610 (1980) AT PAGE 1613, NOTE 2. CITED GIBSON, AS WELL AS NUMEROUS OTHER CASES WHEREIN THE SUPREME COURT HAS HELD TO THE PRINCIPLE THAT:

"...JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE..."

MARSHALL, AT PAGE 1613 FURTHER STATES:

"...THE DUE PROCESS CLAUSE ENTITLES A PERSON TO AN IMPARTIAL AND DISINTERESTED TRIBUNAL IN ...CIVIL...CASES..."

"...WE HAVE EMPLOYED THE SAME PRINCIPLE IN A VARIETY OF SETTINGS, DEMONSTRATING THE POWERFUL AND INDEPENDENT CONSTITUTIONAL INTEREST IN FAIR ADJUDICATIVE PROCEDURE..."

ANY TEXAS STATUTE WHICH WOULD PERMIT ANY STATE COURT JUDGE TO SIT IN A CASE WHEREIN HE WAS INTERESTED WOULD BE MADE VOID BY ARTICLE 1, SECTION 29, OF THE TEXAS CONSTITUTION (APPENDIX, PAGE 163).

PETITIONER SHOWS THAT THE FIFTH CIRCUIT WAS IN ERROR IN CITING LOPEZ, SUPRA, AS SUPPORT FOR THE OPINION THAT JUDGE SIDNEY J. BROWN, WAS NOT DEPRIVED OF JURISDICTION IN THE INSTANT CASE.

THOSE MANY CASES AS CITED BY THE SUPREME COURT IN MARSHALL, SUPRA, CLEARLY SHOW THAT THE INTEREST OF A JUDGE IN A PARTICULAR LAWSUIT HE IS TRYING AS JUDGE, IS A FEDERAL QUESTION.

PETITIONER RESPECTFULLY MAINTAINS THAT THE FIFTH CIRCUIT ERRED IN HOLDING, IN EFFECT, THAT THE INTEREST OF JUDGE SIDNEY J. BROWN AS CHARGED IN THE INSTANT CASE DID NOT RAISE A FEDERAL QUESTION.

PETITIONER, AT TRIAL, WILL OFFER PROOF THAT JUDGE SIDNEY J. BROWN, WAS BRIBED AND THAT HE HAD AN IMMEDIATE AND DIRECT FINANCIAL INTEREST IN THE OUTCOME OF CAUSE 30,035, AND WAS ACCORDINGLY WITHOUT JURISDICTION IN THAT CASE.

QUESTION II.

MAY A STATE COURT JUDGE, CONSISTENT WITH DUE PROCESS, ACT AS BOTH JUDGE AND ATTORNEY FOR ONE OF THE PARTIES IN THE LAWSUIT THE STATE COURT JUDGE IS TRYING, AT THE SAME TIME IN THE SAME LAWSUIT?

THE TEXAS CONSTITUTION, ARTICLE 5, SECTION 11, (APPENDIX, PAGE 163) PROVIDES IN PART:

> "...NO JUDGE SHALL SIT...WHEN HE SHALL HAVE BEEN COUNSEL IN THE CASE..."

PETITIONER, IN HIS COMPLAINT HAS CHARGED (APPENDIX, PAGES 84 AND 85):

> "2. DEFENDANT BROWN WAS DISQUALIFIED AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS TO HEAR THE AFOREMENTIONED CAUSE NUMBER 30,035 BY VIRTUE OF THE FACT THAT BROWN GAVE ADVICE TO MARY WELLS ON MATTERS RELATING TO THE PROCEEDINGS INVOLVED IN THE SUBJECT CAUSE NUMBER 30,035 AT VARIOUS TIMES DURING THE PERIOD BEGINNING ON OR ABOUT JANUARY 30, 1976 AND ENDING ON OR ABOUT JANUARY 4, 1980..."

PETITIONER'S WIFE, MARY WELLS, HAS FILED AN ANSWER TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT (APPENDIX,

PAGE 135) TO THE FIFTH COUNT OF PETITIONER'S COMPLAINT AS QUOTED ABOVE, IN PART, AS FOLLOWS:

> "AS TO THE ALLEGATIONS SET OUT IN THE FIFTH COUNT, THE DEFENDANT WOULD ANSWER AS FOLLOWS: THE STATEMENTS CONTAINED IN THE FIFTH COUNT OF THE COMPLAINT DO NOT REQUIRE RESPONSIVE PLEADINGS BY THIS DEFENDANT AND ARE NEITHER ADMITTED NOR DENIED..."

PETITIONER SHOWS THAT PETITIONER'S WIFE, AS RECIPIENT OF THE LEGAL ADVICE AS GIVEN TO HER BY JUDGE SIDNEY J. BROWN, HAS ADMITTED THAT SUCH ADVICE WAS GIVEN AND RECEIVED BY HER DURING THE PROCEEDINGS IN THAT LAWSUIT WHEREIN SHE WAS PETITIONER AND SIDNEY J. BROWN WAS JUDGE. RULE 8(D) (APPENDIX, PAGE 170) STATES AS FOLLOWS:

> "EFFECT OF FAILURE TO DENY. AVERMENTS IN A PLEADING TO WHICH A RESPONSIVE PLEADING IS REQUIRED, OTHER THAN THOSE AS TO THE AMOUNT OF DAMAGE, ARE ADMITTED WHEN NOT DENIED IN THE RESPONSIVE PLEADING..."

A RESPONSIVE PLEADING WAS

REQUIRED BUT PETITIONER'S WIFE DID NOT DENY THE CHARGES AS MADE IN THE FIFTH COUNT OF PETITIONER'S COMPLAINT AS FILED IN THE DISTRICT COURT, AND ACCORDINGLY, THE MATTERS CHARGED IN THE SAID FIFTH COUNT STAND ADMITTED BY PETITIONER'S WIFE.

ADDITIONALLY, IN THE NINETEENTH COUNT OF PETITIONER'S COMPLAINT (APPENDIX, PAGE 120) PARAGRAPH 4. IT IS CHARGED:

> "4. IT IS SHOWN THAT BROWN ACTED AS DID WHITWORTH OUTSIDE HIS JURISDICTION AND AUTHORITY, UNDER COLOR OF LAW, TO PERFORM ACTS IN CONSPIRACY, AND INDIVIDUALLY NOT NORMALLY PERFORMED BY A JUDGE OR RECEIVER AND ARE THEREFORE NOT PROTECTED BY THE DOCTRINE OF JUDICIAL IMMUNITY. IT IS SHOWN THAT THE REMAINING DEFENDANTS ACTED IN CONSPIRACY WITH BROWN AND WHITWORTH WHO ACTED UNDER COLOR OF LAW..."

PETITIONER'S WIFE IN HER ANSWER (APPENDIX, PAGE 135), STATED:

> "4. THE ALLEGATIONS CONTAINED IN PARAGRAPH 4 DO NOT REQUIRE RESPONSIVE PLEADINGS BY THIS DEFENDANT AND ARE NEITHER ADMITTED NOR DENIED..."

PETITIONER RESPECTFULLY SHOWS THAT PURSUANT TO THE FOREGOING QUOTED PROVISIONS OF RULE 8(D), FEDERAL RULES OF CIVIL PROCEDURE, PETITIONER'S WIFE, BY FAILURE TO DENY HAS ADMITTED THE CONSPIRACY AS CHARGED AND THAT SHE ACTED IN CONSPIRACY WITH BROWN AND WHITWORTH, WHO ACTED OUTSIDE THEIR AUTHORITY AND JURISDICTION.

CONCERNING THE GIVING OF ADVICE TO A LITIGANT BY A TEXAS JUDGE THE TEXAS COURTS HOLD THAT SUCH ACTION DISQUALIFIES THE SUBJECT JUDGE, EVEN IF THE ADVICE WAS UNKNOWING OR ACCIDENTIAL (PINCHBACK V. PINCHBACK, (CA) 341 SW2D 549, REH DEN; FRY V. TUCKER, 292 SW2D 218). IN JOHNSON V. JOHNSON, (CA) 89 SW 1102, IT WAS HELD:

> "IT IS IMMATERIAL WHAT WAS SAID IN THIS CONSULTATION OR WHAT ADVICE WAS. IT MAY BE CONSIDERED BY HIM MATTER NOT AFFECTING CASE OR ONE TOO TRIVAL FOR PLAINTIFF TO NOTICE; AND WHAT HE SAID WAS SIMPLY TO DISABUSE HER APPREHENSIONS OR ALLAY HER FEARS AS TO CONDUCT OF OPPOSING COUNSEL..."

33 TEX JUR2D 58, STATES AS TO A DISQUALIFIED TEXAS JUDGE:

> "ANY ORDER THAT HE PURPORTS TO MAKE OR ANY JUDGMENT RENDERED BY HIM IS ABSOLUTELY VOID; AND HIS DISQUALFICATION CANNOT BE WAIVED OR CURED BY CONSENT OF THE PARTIES. SINCE SUCH AN ORDER OR JUDGMENT IS A NULLITY, THE CASE IS LEFT UNDISPOSED OF AS COMPLETELY AS IF THE JUDGE HAD NOT BEEN PRESENT AT THE COURT"

AND AT 33 TEX JUR2D 59, IT IS STATED:

> "DISQUALIFICATION DEPRIVES THE JUDGE OF AUTHORITY TO ENTER ANY MATERIAL ORDER OR JUDGMENT IN THE CASE; HIS INCAPACITY EXTENDS TO ANY ACTION THAT INVOLVES THE EXERCISE OF JUDICIAL DISCRETION"

PETITIONER ASSERTS THAT IF, AS THE CASES IN TEXAS HOLD, A CASE PRESIDED OVER BY A DISQUALIFIED JUDGE IS LEFT UNDISPOSED OF AS COMPLETELY AS IF THE JUDGE HAD NOT BEEN PRESENT AT THE COURT, THEN JUDGE SIDNEY J. BROWN, BEING DISQUALIFIED, COULD NOT HAVE JURISDICTION IN CAUSE 30,035.

IT IS RESPECTFULLY SHOWN THAT THE

FIFTH CIRCUIT ERRED IN HOLDING IN ITS OPINION (APPENDIX, PAGE 153):

> "THE MISCONDUCT DESCRIBED IN THE COMPLAINT RELATES ONLY TO ACTS PERFORMED BY THE JUDGE IN HIS CAPACITY AS JUDGE, I.E., JUDICIAL ACTS."

MARSHALL, SUPRA, WITH ITS STATED REQUIREMENTS OF 'REALITY OF FAIRNESS' AND AND 'NEUTRALITY', EVEN IF THE TEXAS CONSTITUTION DID NOT DISQUALIFY JUDGE BROWN, WOULD INVALIDATE ANY JUDICIAL ACTS BY ONE WHO ALSO, AT THE SAME TIME IN THE SAME CASE, ACTED AS ATTORNEY FOR ONE OF THE PARTIES IN THE LAWSUIT HE WAS TRYING AS JUDGE.

IT IS SHOWN THAT A FEDERAL QUESTION HAS BEEN RAISED CONCERNING THE DISQUALIFICATION OF SIDNEY J. BROWN AS JUDGE TO HEAR CAUSE 30,035 AND THAT PETITIONER'S COMPLAINT WAS ERRONEOUSLY DISMISSED IN THE DISTRICT COURT FOR LACK OF SUBJECT MATTER JURISDICTION (APPENDIX, PAGES 136 AND 138).

QUESTION III.
DOES THE STATE OF TEXAS, OR A STATE COURT JUDGE ACTING FOR THE STATE OF TEXAS, HAVE AUTHORITY TO DENY EQUALITY UNDER THE LAWS AND DUE PROCESS RIGHTS BECAUSE A STATE COURT LITIGANT IS A FEDERAL BANKRUPT?

PETITIONER HAS ALLEGED IN HIS COMPLAINT (APPENDIX, PAGE 104), THAT THE CONSPIRATORS FORCED PETITIONER INTO BANKRUPTCY, THEN JUDGE BROWN WOULD NOT ALLOW PETITIONER TO TAKE THE DEPOSITION OF PETITIONER'S WIFE BECAUSE PETITIONER WAS "A BANKRUPT" (APPENDIX, PAGE 114).

THE SUPREME COURT IN PEREZ V. CAMPBELL, 29 L.ED2D 233, AT PAGE 241 SAID:

> "THE COURT ON NUMEROUS OCCASIONS HAS STATED THAT ONE OF THE PRIMARY PURPOSES OF THE BANKRUPTCY ACT 'IS TO GIVE DEBTORS A NEW OPPORTUNITY IN LIFE AND A CLEAR FIELD FOR FUTURE EFFORT, UNHAMPERED BY THE PRESSURE AND DISCOURAGEMENT OF PREEXISTING DEBT"

AND ON PAGE 244:

> "THUS,...CAN HAVE NO AUTHORITATIVE EFFECT TO THE EXTENT THEY ARE INCONSISTENT WITH THE CONTROLLING PRINCIPLE THAT ANY STATE LEGISLATION WHICH FRUSTRATES THE FULL EFFECTIVENESS OF FEDERAL LAW IS"

"RENDERED INVALID BY THE SUPREMACY CLAUSE..."

PETITIONER RESPECTFULLY SHOWS THAT THE STATE OF TEXAS, BY OR THROUGH ITS JUDGES, OR OTHERWISE, MAY NOT ACT TO FRUSTRATE THE BANKRUPTCY ACT.

PETITIONER ASSERTS THAT A FEDERAL QUESTION IS RAISED BY THE ISSUE OF THE CHARGED DENIAL OF EQUALITY UNDER THE LAW BECAUSE PETITIONER WAS A FEDERAL BANKRUPT, AND ACCORDINGLY IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS PETITIONER'S COMPLAINT BECAUSE OF LACK OF SUBJECT MATTER JURISDICTION.

FURTHERMORE, PETITIONER HAS CHARGED IN HIS COMPLAINT (APPENDIX, PAGES 75 AND 76), THAT JUDGE BROWN ACTED TO HOLD TRIAL TO MAKE DISPOSITION OF PETITIONER'S ESTATE WHILE THAT ESTATE WAS WITHIN THE EXCLUSIVE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT, AND (APPENDIX, PAGES 75 AND 76), THAT JUDGE BROWN ACTED IN

VIOLATION OF A PROPER INJUNCTION OF THE UNITED STATES BANKRUPTCY COURT TO HOLD PETITIONER PERSONALLY LIABLE FOR DEBTS ALREADY DISCHARGED IN BANKRUTPCY, IN USURPATION OF THE JURISDICTION OF THE BANKRUPTCY COURT. ADDITIONALLY, THE COMPLAINT (APPENDIX, PAGE 104), CHARGES THAT JUDGE BROWN ACTED TO THE INJURY OF THE COMMUNITY CREDITORS TO STRENGTHEN THE POSITION OF PETITIONER'S WIFE; THAT JUDGE BROWN ACTED TO IMPEDE AND HINDER THE "FRESH START" OF PETITIONER IN ACCORDANCE WITH THE PRINCIPLES OF THE BANKRUPTCY ACT.

THE FOREGOING IS ASSERTED TO BE A VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION (APPENDIX, PAGE 160), RAISING A FEDERAL QUESTION.

PETITIONER SHOWS THAT THE DISTRICT COURT ERRED IN DISMISSING PETITIONER'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION.

QUESTION IV.

IS A FUNDAMENTAL JURISDICTIONAL ERROR CONSTITUTED BY A STATE COURT JUDGE STRUCTURING LITIGATION SO THAT ONE OF THE PARTIES IS PRECLUDED FROM PRESENTING EVIDENCE ON THE MATTER IN CONTROVERSY?

PETITIONER IN HIS COMPLAINT HAS CHARGED THE IMPOSITION OF A CONTEMPT FINE WHERE NO NOTICE OF CONTEMPT HEARING WAS GIVEN (APPENDIX, PAGE 87) AND THAT PETITIONER'S WIFE WAS ALLOWED WITNESSES AND THE ADMISSION OF EVIDENCE ON THE MATTERS IN CONTROVERSY IN CAUSE 30,035, BUT THAT PETITIONER WAS NOT ALLOWED WITNESSES NOR THE ADMISSION OF EVIDENCE ON THE MATTERS IN CONTROVERSY (APPENDIX, PAGES 114 AND 115).

PLAINTIFF WILL OFFER PROOF, AT TRIAL, THAT JUDGE BROWN ENTERED A CONSPIRACY TO DENY CIVIL RIGHTS TO PETITIONER AS SUCH RIGHTS ARE SECURED TO PETITIONER BY THE UNITED STATES CONSTITUTION, AS AMENDED, AND THAT JUDGE BROWN ACCORDINGLY STRUCTURED CAUSE 30,035 IN A MANNER SO THAT PETITIONER

WAS PRECLUDED FROM PRESENTING ANY EVIDENCE CONCERNING THE DECISIONS AS WERE MADE IN CAUSE 30,035.

PETITIONER ASSERTS THAT RANKIN V. HOWARD, 633 F.2D 844 (9TH CIR 1980) CERT. DEN. 101 S.CT. 2020 (1981) SUPPORTS THE PROPOSITION, WHICH PETITIONER HERE ASSERTS THAT:

> "WHEN A JUDGE STRUCTURES A CONTROVERSY SUCH THAT ONE SIDE IS NECESSARILY PRECLUDED FROM PRESENTING ANY EVIDENCE CONCERNING THE DECISION TO BE MADE, THE COURT'S ACTIONS PROPERLY CAN BE VIEWED AS A JURISDICTIONAL ERROR RATHER THAN A MERE ERROR IN THE EXERCISE OF POWER" NOTE 12, PAGE 848, RANKIN, SUPRA.

PETITIONER SHOWS THAT THERE WAS NO PERSONAL JURISDICTION OF PETITIONER IN CAUSE 30,035 AND THAT A FEDERAL QUESTION HAS BEEN RAISED AS TO THIS ISSUE AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO HAVE DISMISSED PETITIONER'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION.

QUESTION V.

MUST CLAIMS MADE PURSUANT TO RELIEF STATUTES 28 USC 1983 AND 28 USC 1985 BE STATED WITH PARTICULARITY?

THE FIFTH CIRCUIT IN ITS OPINION (APPENDIX, PAGE 155) HAS STATED THAT PETITIONER "MERELY CHARACTERIZED THE DEFENDANTS' CONDUCT AS CONSPIRATORIAL OR UNLAWFUL".

PETITIONER SHOWS THAT PETITIONER HAS STATED SPECIFIC ACTS (APPENDIX, PAGES 121 TO 126) AND HAS ADDITIONALLY CHARGED CLANDESTINE ACTS (APPENDIX, PAGE 126) WHICH WOULD AT THIS TIME BE UNKNOWN TO PETITIONER, BUT WHICH THE CIRCUMSTANCES CLEARLY SHOW EXISTED.

THE "MERELY CHARACTERIZED" PHRASE SEEMS TO BE AN ARBITRARY AND UNFAIR CHARACTERIZATION LEAVING NO UNDERSTANDING OF WHAT IS MEANT.

PETITIONER MAINTAINS THAT HE HAS COMPLIED WITH THE NOTICE PLEADING REQUIREMENTS OF RULE 8(A)(2), FEDERAL RULES OF

CIVIL PROCEDURE, WHICH ACCORDS WITH CONLEY V. GIBSON, 355 US 41, 2 LED2D 80, 78 S.CT. 99, WHICH STATES ON PAGE 85 OF 2 LED2D 80:

> "...ALL THE RULES REQUIRE IS 'A SHORT AND PLAIN STATEMENT OF THE CLAIM' THAT WILL GIVE THE DEFENDANT FAIR NOTICE OF WHAT THE PLAINTIFF'S CLAIM IS AND THE GROUNDS UPON WHICH IT RESTS."

FOLLOWING CONLEY, THE EIGHTH CIRCUIT SAID IN REED V. BOARD OF EDUCATION, 460 F2D 824, 826 (8TH CIR 1972):

> "...THE POINT OF PRINCIPAL IMPORTANCE IS THAT LAWSUITS NO LONGER ARE TO BE ROUTINELY DISPOSED OF SOLELY ON THE BASIS OF THE PHRASEOLOGY A PLAINTIFF SELECTS IN FRAMING HIS COMPLAINT."

THE FIFTH CIRCUIT SAID IN HINES V. DELTA AIR LINES, INC., 461 F2D 576, 580:

> "DISMISSALS CANNOT BE SUSTAINED UNDER CONLEY FOR FACTUAL INADEQUACIES..."

PETITIONER ASSERTS THAT THE REQUIREMENTS OF RULE 8(A)(2), FEDERAL RULES OF CIVIL PROCEDURE HAVE BEEN MET. NO MOTIONS FOR A MORE DEFINITE STATEMENT WERE MADE.

THE SUPREME COURT HELD IN GOMEZ V. TOLEDO, 64 L ED2D 572 (1980) AT PAGE 577:

> "...BY THE PLAIN TERMS OF SECTION 1983, TWO---AND ONLY TWO---ALLEGATIONS ARE REQUIRED IN ORDER TO STATE A CAUSE OF ACTION UNDER THAT STATUTE, FIRST, THE PLAINTIFF MUST ALLEGE THAT SOME PERSON HAS DEPRIVED HIM OF A FEDERAL RIGHT. SECOND, HE MUST ALLEDGE THE THE PERSON WHO HAS DEPRIVED HIM OF THAT RIGHT ACTED UNDER COLOR OF STATE OR TERRITORIAL LAW..."

THE SUPREME COURT HELD IN GRIFFIN V. BRECKENRIDGE, 91 S.CT. 1790 (1971) AT PAGE 1798:

> "...TO COME WITHIN THE LEGISLATION A COMPLAINT MUST ALLEGE THAT THE DEFENDANTS DID (1) CONSPIRE... (2) FOR THE PURPOSE OF DEPRIVING EITHER DIRECTLY OR INDIRECTLY, ANY PERSON OR CLASS OF PERSONS OF THE EQUAL PROTECTION OF THE LAWS, OR OF EQUAL PRIVILEGES AND IMMUNITIES UNDER THE LAWS. IT MUST THEN ASSERT THAT ONE OR MORE OR THE CONSPIRATORS (3) DID OR CAUSED TO BE DONE, ANY ACT IN FURTHERANCE OF THE OBJECT OF THE CONSPIRACY, WHEREBY ANOTHER WAS (4A) INJURED IN HIS PERSON OR PROPERTY OR (4B) DEPRIVED OF HAVING AND EXERCISING ANY RIGHT"

OR PRIVILEGE OF ANY CITIZEN OF THE UNITED STATES.

PETITIONER SHOWS THAT THE COMPLAINT PROPERLY SETS OUT NOTICE TO THE DEFENDANTS AS IS REQUIRED, AND THAT IT WAS ERROR FOR THE FIFTH CIRCUIT COURT OF APPEALS TO HOLD THAT PETITIONER HAD NOT MADE A PROPER PLEADING.

QUESTION VI.

IS EQUITABLE RELIEF PURSUANT TO 28 USC 1983 AND 28 USC 1985 AND DECLARATORY RELIEF PURSUANT TO 28 USC 2201; 2202, AVAILABLE IN FEDERAL COURT?

THE SUPREME COURT AT NOTE 14, PAGE 1976 OF SUPREME COURT OF VIRGINIA V. CONSUMERS UNION, ETC., 100 S.CT. 1967 (1980) SAID:

> "THE COURT DID SAY...TO THIS EFFECT, THAT 1983 WAS DESIGNED TO ENFORCE THE PROVISIONS OF THE FOURTEENTH AMENDMENT AGAINST ALL STATE ACTION, WHETHER THAT ACTION BE EXECUTIVE, LEGISLATIVE OR JUDICIAL."

THE SUPREME COURT IN OWEN V.CITY OF INDEPENDENCE, MO., 100 S.CT. 1398(1980) AT PAGE 1415 SAID AS FOLLOWS:

> "...THE CENTRAL AIM OF THE CIVIL RIGHTS ACT WAS TO PROVIDE PROTECTION TO THOSE PERSONS WRONGED BY THE 'MISUSE OF POWER, POSSESED BY VIRTUE OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONGDOER IS CLOTHED WITH THE AUTHORITY OF STATE LAW'..."

THE FIFTH CIRCUIT IN SPARKS V. DUVAL COUNTY RANCH CO.,INC., 604 F2D 976, (5TH CIR EN BANC 1979) AFFIRMED 101 S.CT.

183 (1980) SAID, AT PAGE 980:

> "...WE HAVE NEVER HELD THAT JUDGES ARE IMMUNE FROM CLAIMS FOR EQUITABLE RELIEF, AND BOTH WE AND THE SUPREME COURT HAVE INTIMATED THE CONTRARY..."

THE PROVISIONS OF 42 USC 1983 (APPENDIX, PAGE 166), SPECIFICALLY PROVIDES THAT A PERSON INJURING ANOTHER SHALL "BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY OR OTHER PROPER PROCEEDING FOR REDRESS.."

WHILE THE FIFTH CIRCUIT HAS SAID IN TARTER V. HURY, 646 F2D 1010 (5TH CIR 1981), AT NOTE 4, ON PAGE 1012:

> "THREE FEDERAL COURTS OF APPEALS HAVE HELD THAT JUDGES ARE NOT IMMUNE FROM CLAIMS FOR EQUITABLE RELIEF, AND THREE OTHERS HAVE INDICATED AGREEMENT WITH THAT VIEW....THIS COURT ALSO HELD THAT JUDGES DO NOT ENJOY SUCH IMMUNITY, BUT LATER WITHDREW THAT HOLDING FOR MOOTNESS."

PETITIONER ASSERTS AND CONTENDS THAT JUDGES ARE NOT IMMUNE FROM CLAIMS FOR EQUITABLE RELIEF. THE FOREGOING IS ESPECIALLY SHOWN

TO BE APPROPRIATE IN THE INSTANT CASE, WHERE JUDGE BROWN WAS WITHOUT ALL JURISDICTION, AS AFORESAID, AND DOUBT AND UNCERTAINTY EXIST CONCERNING ALL THE ORDERS AND JUDGMENTS JUDGE BROWN ENTERED WHILE HE WAS WITHOUT ALL JURISDICTION.

THE SUPREME COURT SAID IN SUPREME COURT OF VIRGINIA V. CONSUMERS UNION, ETC. 100 S.CT. 1967 (1980) AT PAGE 1976:

> "HOWEVER, WE HAVE NEVER HELD THAT JUDICIAL IMMUNITY ABSOLUTELY INSULATES JUDGES FROM DECLARATORY OR INJUNCTIVE RELIEF WITH RESPECT TO THEIR JUDICIAL ACTS. THE COURTS OF APPEALS APPEAR TO BE DIVIDED ON THE QUESTION WHETHER JUDICIAL IMMUNITY BARS DECLARATORY OR INJUNCTIVE RELIEF; WE HAVE NOT ADDRESSED THE QUESTION."

PETITIONER ASSERTS THAT A FEDERAL QUESTION HAS BEEN RAISED CONCERNING THE AVAILABILITY OF EQUITABLE AND DECLARATORY RELIEF IN THE FEDERAL COURTS, AND THAT THE DISTRICT COURT ERRED IN DISMISSING THE PETITIONER'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION.

QUESTION VII.

MAY AN ACTION CHARGING CONSPIRACY TO DENY CIVIL RIGHTS AS SECURED BY THE UNITED STATES CONSTITUTION, AS AMENDED, BE MAINTAINED IN FEDERAL COURT?

THE FIFTH CIRCUIT IN SCOTT V. MOORE, 640 F2D 708 (5TH CIR 1981) AT PAGE 720 HOLDS:

> "GRIFFIN, THE STATUTORY TEXT, COMPANION CIVIL RIGHTS PROVISIONS, AND THE LEGISLATIVE HISTORY ALL INDICATE THAT A CONSPIRACY MOTIVATED BY INVIDIOUSLY DISCRIMINATORY INTENT OTHER THAN RACIAL BIAS IS ACTIONABLE UNDER SECTION 1985(3)."

THE FIFTH CIRCUIT IN SPARKS, SUPRA, AT PAGE 983 HELD:

> "...COCONSPIRATORS ACT UNDER COLOR OF LAW AND CAN BE SUED FOR DAMAGES IN A SECTION 1983 ACTION WHEN THEY INVOLVE A JUDGE IN THEIR PLOT, REGARDLESS OF WHETHER THE JUDGE CAN BE BROUGHT TO JUSTICE FOR HIS PART IN THE SCHEME..."

SLAVIN V. CURRY, 574 F2D 1256 (5TH CIR 1978) AT PAGE 1261 HOLDS:

> "AN ACTION FOR CONSPIRACY MAY BE MAINTAINED UNDER SECTION 1983."

THE FIFTH CIRCUIT IN FADJO V. COON, 633 F2D 1172 (5TH CIR 1981) AT PAGE 1174 AND 1175, HELD:

> "TO STATE A CLAIM UNDER SECTION 1983, FADJO MUST ALLEGE THAT THE APPELLEES 'DEPRIVED HIM OF A RIGHT SECURED BY THE 'CONSTITUTION AND LAWS' OF THE UNITED STATES' AND THAT THEY DID SO 'UNDER COLOR OF ANY STATUTE, ORDINAMCE, REGULATION CUSTOM, OR USAGE OF ANY STATE... "

PETITIONER SHOWS THAT PETITIONER HAS TAKEN THE VERY ACTIONS WHICH THE FIFTH CIRCUIT IN FADJO, SAID WERE NECESSARY IN ORDER STATE A CLAIM UNDER SECTION 1983, AND THE FIFTH CIRCUIT, CONTINUES:

> "FADJO HAS ALLEGED THE REQUISITE STATE ACTION ON THE PART OF ALL THE DEFENDANTS IN CHARGING THEM WITH CONSPIRING TO DEPRIVE HIM OF HIS CIVIL RIGHTS..".

PETITIONER HAS DONE ALL THAT THE FIFTH CIRCUIT HAS SAID WAS NECESSARY OF FADJO, BUT, FADJO'S CLAIM WAS FOUND PROPER AND PETITIONER'S CLAIM WAS FOUND IMPROPER.

PETITIONER MAINTAINS THAT THE

THE FINDING OF THE FIFTH CIRCUIT ON PAGE 1174 OF FADJO, THAT THE DISTRICT COURT IMPROPERLY DISMISSED FADJO'S CLAIM ON THE GROUNDS OF LACK OF SUBJECT MATTER JURISDICTION, APPLIES TO PETITIONER'S CLAIM AND THAT THE FIFTH CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF PETITIONER'S COMPLAINT.

QUESTION VIII.

IS AN ACTION MAINTAINABLE IN FEDERAL COURT PURSUANT TO RELIEF STATUTES 28 USC 1983 AND 28 USC 1985 FOR NAME CLEARING 'BECAUSE OF WHAT THE GOVERNMENT IS DOING' TO THE PLAINTIFF IN SUCH AN ACTION?

THE SUPREME COURT IN WISCONSIN V. CONSTANTINEAU, 27 L ED2D 515, (1971) AT PAGE 519 SAID:

> "WHERE A PERSONS GOOD NAME, REPUTATION, HONOR OR INTEGRITY IS AT STAKE BECAUSE OF WHAT THE GOVERNMENT IS DOING TO HIM, NOTICE AND AN OPPORTUNITY TO BE HEARD ARE ESSENTIAL...ONLY WHEN THE WHOLE PROCEEDINGS LEADING TO THE PINNING OF AN UNSAVORY LABEL ON A PERSON ARE AIRED CAN OPPRESSIVE RESULTS BE PREVENTED..."

THE TEXAS CONSTITUTION (APPENDIX, PAGE 162), STATES AS FOLLOWS:

> "...EVERY PERSON FOR AN INJURY DONE HIM, IN HIS LANDS, GOODS, PERSON OR REPUTATION, SHALL HAVE REMEDY BY DUE COURSE OF LAW."

THE FIFTH CIRCUIT CITING WISCONSIN, SUPRA, IN MARRERO V. CITY OF HIALEAH, 625 F2D 499 (5TH CIR 1980) PAGE 511 SAID:

> "WE NOTE THAT IN THE CONTEXT OF THE COMMON LAW TORT OF DEFAMATION THE SUPREME COURT HAS HELD"

"THAT FIRST AMENDMENT GUARANTEES PRECLUDE THE IMPOSITION OF LIABILITY UPON DEFENDANTS WITHOUT FAULT"

THE TEXAS SUPREME COURT IN

COCKERHAM V. COCKERHAM, 527 SW2D 162(1975)

AT PAGE 171, SAID:

"IT IS WELL ESTABLISHED THAT DEBTS CONTRACTED DURING MARRIAGE ARE PRESUMED TO BE ON THE CREDIT OF THE COMMUNITY AND THUS ARE JOINT COMMUNITY OBLIGATIONS UNLESS IT IS SHOWN THE CREDITOR AGREED TO LOOK SOLELY TO THE SEPARATE ESTATE OF THE CONTRACTING SPOUSE FOR SATISFACTION."

PETITIONER SHOWS THAT HE WAS WRONGFULLY FORCED INTO BANKRUPTCY AS ALLEGED IN THE COMPLAINT (APPENDIX, PAGE 104),THROUGH NO FAULT OF PETITIONER, AND AS A CONSEQUENCE WAS MADE DESTITUTE AND A PAUPER, WITHOUT DUE PROCESS OF LAW, AND WAS THE VICTIM OF EXCESSIVE FINES WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE CONSTITUTION OF THE STATE OF TEXAS AFORESAID.

PETITIONER ASSERTS THAT PETITIONER IS ENTITLED TO A HEARING IN FEDERAL DISTRICT COURT TO CLEAR PETITIONER'S NAME "BECAUSE OF WHAT THE GOVERNMENT IS DOING TO HIM".

PETITIONER SHOWS THAT AS IN WISCONSIN, SUPRA, AND MARRERO, SUPRA, A FEDERAL QUESTION HAS BEEN RAISED BECAUSE OF THE LABELING OF PETITIONER AS PAUPER, BANKRUPT AND DESTITUTE, THROUGH NO FAULT OF PETITIONER, WITHOUT DUE PROCESS OF LAW, UNDER COLOR OF LAW, AND THAT IT WAS ERROR TO DISMISS THE COMPLAINT BECAUSE OF LACK OF SUBJECT MATTER JURISDICTION.

QUESTION IX.

MAY A CONSPIRACY TO DENY CIVIL RIGHTS AS SECURED BY THE CONSTITUTION OF THE UNITED STATES, AS AMENDED, ENGAGED IN BY A STATE COURT JUDGE, BE PROPERLY CLASSIFIED AS A "JUDICIAL ACT"?

PETITIONER ASSERTS THAT THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION (APPENDIX, PAGE 160), WOULD MAKE VOID OR UNCONSTITUTIONAL ANY AGREEMENT MADE BY A STATE COURT JUDGE CONTRARY TO THE PROVISIONS OF THE CONSTITUTION, AS AMENDED.

THE NINTH CIRCUIT IN RANKIN, SUPRA, AT PAGE 847 HELD:

> "...ALTHOUGH A PARTY CONNIVING WITH A JUDGE TO PREDETERMINE THE OUTCOME OF A JUDICIAL PROCEEDING MAY DEAL WITH HIM IN HIS 'JUDICIAL CAPACITY' THE OTHER PARTY'S EXPECTATION, I.E. JUDICIAL IMPARTIALITY, IS ACTIVELY FRUSTRATED BY THE SCHEME. IN ANY EVENT, THE AGREEMENT IS NOT 'A FUNCTION NORMALLY PERFORMED BY A JUDGE.' IT IS THE ANTITHESIS OF THE 'PRINCIPLED AND FEARLESS DECISION MAKING' THAT JUDICIAL IMMUNITY EXISTS TO PROTECT."
>
> "WE CONCLUDE THAT A JUDGE'S PRIVATE PRIOR AGREEMENT TO DECIDE"

" IN FAVOR OF ONE PARTY IS NOT A JUDICIAL ACT. "

PETITIONER SHOWS THAT RANKIN SUPPORTS THE PETITIONER'S POSITION THAT JUDGE BROWN, IN MAKING THE AGREEMENT IN CONSPIRACY AND IN FURTHERING THAT AGREEMENT WAS NOT PERFORMING A JUDICIAL ACT AND THAT IT WAS ERROR FOR THE FIFTH CIRCUIT TO CONSIDER AN AGREEMENT IN CONSPIRACY, AS CHARGED, A JUDICIAL ACT (APPENDIX, PAGE 153).

IT IS ASSERTED THAT A FEDERAL QUESTION HAS BEEN RAISED AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS PETITIONER'S COMPLAINT.

QUESTION X.

IS THE ANNOUNCEMENT TO THE JURY, IN A STATE COURT LAWSUIT THAT A LITIGANT'S ATTORNEY IS OF THE JEWISH RELIGION, IN ORDER TO PREJUDICE THAT JURY AGAINST THAT LITIGANT, A VIOLATION OF DUE PROCESS?

PETITIONER MAINTAINS THAT SUCH ANNOUNCEMENT IS A VIOLATION OF THE PRINCIPLES OF NEUTRALITY AND REALITY OF FAIRNESS REQUIRED BY MARSHALL, SUPRA, AND THAT SUCH ACTS AS CHARGED IN THE COMPLAINT (APPENDIX, PAGES 81,82 & 83), VIOLATE THAT "WALL OF SEPARATION OF CHURCH AND STATE" SET OUT IN PEOPLE OF STATE OF ILLINOIS V. BOARD OF EDUCATION, 68 S.CT. 461 (1948).

PETITIONER ASSERTS THAT A SUBSTANTIAL FEDERAL QUESTION HAS BEEN RAISED AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS PETITIONER'S COMPLAINT.

QUESTION XI.

CONSISTENT WITH DUE PROCESS, IS A RELIGIOUS TEST PERMISSIBLE IN STATE COURT LITIGATION OF THE JURORS BEFORE THE SUBJECT JURORS ARE PERMITTED TO SERVE AS JURORS?

PETITIONER ASSERTS THAT MARSHALL, SUPRA, AS WELL AS PEOPLE OF STATE OF ILLINOIS, SUPRA, PRECLUDE SUCH A RELIGIOUS TEST.

FURTHERMORE, SUCH A RELIGIOUS TEST IS PROHIBITED BY ARTICLE 1, SECTION 4, OF THE TEXAS CONSTITUTION (APPENDIX, PAGE 161).

PETITIONER ASSERTS THAT A SUBSTANTIAL FEDERAL QUESTION HAS BEEN RAISED AS TO THE RELIGIOUS TEST ISSUE AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS PETITIONER'S COMPLAINT.

QUESTION XII.

CONSISTENT WITH DUE PROCESS, MAY A STATE COURT RECEIVER MAKE JUDICIAL DETERMINATIONS, UNDER COLOR OF LAW, AFFECTING THE PROPERTY AND LIBERTY RIGHTS OF LITIGANTS AS SUCH RIGHTS ARE SECURED TO THE LITIGANTS BY THE CONSTITUTION OF THE UNITED STATES, AS AMENDED?

PETITIONER ASSERTS THAT NONE OTHER THAN MEMBERS OF THE JUDICIARY MAY MAKE JUDICIAL DETERMINATIONS, AND THAT THOSE JUDICIAL DETERMINATIONS AS MADE BY RECEIVER WHITWORTH AS CHARGED IN THE COMPLAINT (APPENDIX, PAGES 95 TO 100), ARE VOID AS A VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND FOR WHICH MISUSE OF POWER THE CENTRAL AIM OF THE CIVIL RIGHTS ACT SET OUT IN OWEN, SUPRA, WAS CONSTITUTED TO CONTROL.

PETITIONER SHOWS THAT A SUBSTANTIAL FEDERAL QUESTION HAS BEEN RAISED BY THE CHARGED JUDICIAL ACTS OF RECEIVER WHITWORTH AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS THE COMPLAINT.

QUESTION XIII.

MAY THE STATE OF TEXAS, OR ITS JUDICIAL OFFICERS, ACTING UNDER COLOR OF LAW, DENY ACCESS TO THE STATE COURTS BASED SOLELY UPON A LITIGANTS INABILITY TO PAY APPEAL COSTS AND FURNISH AN APPEAL BOND?

PETITIONER'S COMPLAINT AS FILED IN THE DISTRICT COURT, ALLEGES THAT APPEAL IN THE STATE COURTS WAS DENIED SOLELY BECAUSE OF PETITIONER'S INABILITY TO PAY THE COSTS AND FEES AS CHARGED BY THE STATE OF TEXAS, BEFORE THEIR COURTS ARE OPEN TO A LITIGANT. (APPENDIX, PAGES 107 AND 108).

THE SUPREME COURT SAID IN BODIE V. CONNECTICUT, 28 LED2D 113, AT PAGES 116 AND 117:

> "...OUR CONCLUSION IS THAT, GIVEN THE BASIC POSITION OF THE MARRIAGE RELATIONSHIP IN THIS SOCIETY HIERARCHY OF VALUES AND THE CONCOMITANT STATE NONOPOLIZATION OF THE MEANS FOR LEGALLY DISSOLVING THIS RELATIONSHIP, DUE PROCESS DOES PROHIBIT A STATE FROM DENYING, SOLELY BECAUSE OF INABILITY TO PAY, ACCESS TO ITS COURTS TO INDIVIDUALS WHO SEEK JUDICIAL DISSOLUTION OF THEIR MARRIAGES..."

THE THIRD CIRCUIT IN LECATES V.

F2D 898 AT PAGES 908 AND 909 HELD:

> "BOTH THE PERSON DESIRING A DIVORCE AND A DEFENDANT INVOLUNTARILY HALED INTO COURT HAVE NO REALISTIC ALTERNATIVE BUT TO PURSUE THE JUDICIAL PROCESSES ESTABLISHED BY THE SOVEREIGN."
>
> "..'FOR AT THAT POINT, THE JUDICIAL PROCEEDING BECOMES THE ONLY EFFECTIVE MEANS OF RESOLVING THE DISPUTE AT HAND AND DENIAL OF A DEFENDANT'S FULL ACCESS TO THAT PROCESS RAISES GRAVE PROBLEMS FOR ITS LEGITIMACY.'401 US 371, 91 S.CT 780, 28 LED2D 113."
>
> "ONCE AN INDIGENT DEFENDANT SUCH AS LECATES IS BROUGHT WITHIN THE AMBIT OF THE STATE'S JUDICIAL POWER, HIS RIGHT TO RECEIVE THE SAME PROTECTIONS AND PROCEDURES REQUIRED BY STATE LAW TO BE EXTENDED TO ALL OTHER LIGIGANTS MAY NOT BE CONDITIONED UPON HIS FINANCIAL MEANS."
>
> "DUE PROCESS REQUIRES, AT A MINIMUM, THAT ABSENT A COUNTERVAILING STATE INTEREST OF OVERRIDING SIGNIFICANCE, PERSONS FORCED TO SETTLE THEIR CLAIMS OF RIGHT AND DUTY THROUGH THE JUDICIAL PROCESS MUST BE GIVEN A MEANINGFUL OPPORTUNITY TO BE HEARD. 401 US AT 377, 91 S.CT. 785."

PETITIONER WAS FACED WITH THE

GRIEVOUS LOSSES AS REFERRED TO IN LECATES AT NOTE 16. ON PAGE 908 IN PROPERTY, MONEY, CREDIT AND REPUTATION, AS AFORESAID, BUT WAS DENIED THE FULL ACCESS TO THE COURT SYSTEM OF THE STATE OF TEXAS BASED SOLELY UPON PETITIONER'S INABILITY TO PAY THE FEES AND COSTS CHARGED BY THE STATE OF TEXAS, FOR THAT ACCESS TO ITS SYSTEM OF JUSTICE, AS IS AVAILABLE TO OTHERS WITH MONEY.

THE CONSPIRACY AS CHARGED IN PETITIONER'S COMPLAINT (APPENDIX, PAGES 117 TO 128), INVOLVED THE DENIAL OF APPEAL TO THE COURTS OF TEXAS TO PETITIONER TO MAKE SECURE THE WRONGFUL TAKING OF PETITIONER'S MONEY AND PROPERTY AND THE LABELING OF PETITIONER AS DESTITUTE, BANKRUPT, PAUPER AND CRIMINAL CONTEMNOR, AFORESAID.

PETITIONER ASSERTS THAT A SUBSTANTIAL FEDERAL QUESTION HAS BEEN RAISED AND IT WAS ERROR TO DISMISS THE COMPLAINT.

QUESTION XIV.

IS SEX DISCRIMINATION, WITHOUT JUSTIFIABLE BASIS, IMPOSED UPON MALES BY THE STATE OF TEXAS, WHERE THE SAME REQUIREMENTS ARE NOT IMPOSED UPON FEMALES UNDER THE EXACT SAME CIRCUMSTANCES, MAINTAINABLE IN FEDERAL COURT PURSUANT TO 28 USC 1983?

PETITIONER HAS CHARGED IN THE COMPLAINT (APPENDIX, PAGE 92), THAT SECTION 3.59 OF THE TEXAS FAMILY CODE WAS UNCONSTITUTIONAL IN THE PROVISIONS OF HE IS UNABLE TO SUPPORT HIMSELF , AS THAT PROVISION WAS APPLIED TO PETITIONER.

THE SUPREME COURT SAID IN KIRCHBERG V. FEENSTRA, 101 S.CT. 1195 (1981), AT PAGE 1198:

> "BY GRANTING THE HUSBAND EXCLUSIVE CONTROL OVER THE DISPOSITION OF COMMUNITY PROPERTY, ART. 2404 CLEARLY EMBODIES THE TYPE OF EXPRESS GENDER-BASED DISCRIMINATION THAT WE HAVE FOUND UNCONSTITUTIONAL ABSENT A SHOWING THAT THE CLASSIFICATION IS TAILORED TO FURTHER AN IMPORTANT GOVERNMENTAL INTEREST."

PETITIONER MAINTAINS THAT THE CHALLENGED PROVISIONS OF THE TEXAS FAMILY CODE FIT THE GENDER-BASED PATTERN WHICH

THE SUPREME COURT FOUND TO BE UNCONSTITUTIONAL IN KIRCHBERG, AND AS IN KIRCHBERG, A FEDERAL QUESTION HAS BEEN RAISED AS TO THE CONSTITUTIONALLY OF THE SUBJECT PROVISIONS OF THE TEXAS FAMILY CODE, AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS PETITIONER'S COMPLAINT.

QUESTION XV.

MAY A STATE COURT JUDGE, CONSISTENT WITH THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, ENJOIN, WITHOUT PLEADINGS THEREFOR, THE PARTIES IN STATE COURT LITIGATION FROM COMMUNICATING WITH EACH OTHER IN ANY MANNER WHATSOEVER DURING THE ENTIRE COURSE OF THE LITIGATION (4 YEARS)?

THE FIFTH CIRCUIT IN BERNARD V. GULF OIL CO., 619 F2D 459 (5TH CIR 1980) AFFIRMED 101 S.CT. 2193 (1981)AT PAGE 474

HELD:

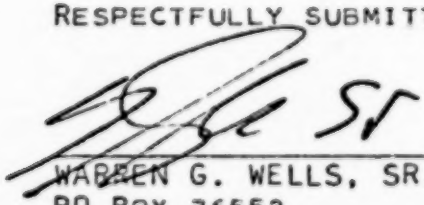
> "BEFORE A PRIOR RESTRAINT MAY BE IMPOSED BY A JUDGE, EVEN IN THE INTEREST OF ASSURING A FAIR TRIAL, THERE MUST BE AN IMMINENT NOT MERELY A LIKELY, THREAT TO THE ADMINISTRATION OF JUSTICE. THE DANGER MUST NOT BE REMOTE OR EVEN PROBABLE; IT MUST IMMEDIATELY IMPERIL."
>
> "IF THE EXIGENCIES OF THE SIXTH AMENDMENT DO NOT LESSEN THE BURDEN ON THOSE WHO SEEK TO JUSTIFY PRIOR RESTRAINTS, THE INTERESTS OF A CIVIL LITIGANT CANNOT DO SO."
>
> "THUS THE GENERAL PRESUMPTION AGAINST PRIOR RESTRAINTS IS NOT MITIGATED BY A CLAIM THAT THE FAIR AND ORDERLY ADMINISTRATION OF JUSTICE IS AT STAKE."

PETITIONER MAINTAINS THAT A

SUBSTANTIAL FEDERAL QUESTION HAS BEEN RAISED IN PETITIONER'S COMPLAINT (APPENDIX PAGES 105 AND 106), AND THAT IT WAS ERROR FOR THE DISTRICT COURT TO DISMISS THE COMPLAINT OF FIRST AMENDMENT VIOLATION BY RESTRAINT OF FREE SPEECH.

WHEREFORE, IT IS RESPECTFULLY SHOWN THAT THE JUDGMENT OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS WAS IN ERROR AS AFORESAID. THEREFORE, IT IS REQUESTED THAT THE SAID JUDGMENT OF THE FIFTH CIRCUIT, UNITED STATES COURT OF APPEALS BE REVERSED AND THAT PETITIONER'S COMPLAINT BE REMANDED FOR TRIAL ON THE MERITS.

RESPECTFULLY SUBMITTED,



WARREN G. WELLS, SR., PRO SE
PO BOX 36552
HOUSTON, TEXAS 77236-6552
713-227-0149

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WARREN G. WELLS, SR., PLAINTIFF	:	
V.	:	CIVIL ACTION NO.
SIDNEY J. BROWN, INDIVIDUALLY, AND AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS; LOGENE FOSTER; MARY WELLS; IRENE WLECZYK; E. J. MEUAX; JAMES S. WHITWORTH; C. D. MCDOWELL; BETTY MCDOWELL; AND LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON, DEFENDANTS	:	H-80-1964

PLAINTIFF WARREN G. WELLS, SR.'S COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF AND OF CIVIL RIGHTS DEPRIVATION AND FOR DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFF COMPLAINS AGAINST THE DEFENDANTS AS FOLLOWS:

JURISDICTION

1. THIS ACTION IS BROUGHT UNDER AUTHORITY OF THE CONSTITUTION OF THE UNITED STATES AND OF THE FIRST, FOURTH, SEVENTH, EIGHTH AND FOURTEENTH AMENDMENTS THERETO.

2. THIS COURT HAS ORIGINAL JURISDICTION PURSUANT TO THE FOLLOWING STATUTES OF THE UNITED STATES CODE: 28 USC 1331 AS TO FEDERAL QUESTIONS AND 28 USC 1334 AS TO BANKRUPTCY MATTERS AND 28 USC 1343 (1), (2),(3) AND (4) AS TO CIVIL RIGHTS MATTERS.

3. RELIEF IS AUTHORIZED ACCORDING TO 28 USC 2201 AND 28 USC 2202 AS TO DECLARATORY AND EQUITABLE RELIEF AND 42 USC 1983 AND 42 USC 1988 AS TO CIVIL RIGHTS MATTERS AND 42 USC 1985 (2) AND (3) AS TO CLASS BASED VIOLATIONS OF CIVIL RIGHTS.

4. THIS ACTION IS NOT BARRED BY ANY TEXAS STATUTE OF LIMITATIONS.

5. ALL ACTS OF DEFENDANTS COMPLAINED OF WERE DONE UNDER COLOR OF LAW.

6. THE AMOUNT ACTUALLY IN CONTROVERSY EXCEEDS $10,000.00 EXCLUSIVE OF INTEREST AND COSTS.

7. AS A JURISDICTIONAL MATTER IT IS SHOWN THAT PURSUANT TO SETTLED LAW IN

TEXAS A VOID TEXAS JUDGMENT MAY BE CHALLENGED AT ANY TIME OR PLACE OP IN ANY FORUM.

8. THIS COURT HAS PENDANT CLAIM AND ANCILLARY JURISDICTION.

9. AS A MATTER OF JURISDICTION PLAINTIFF ALLEGES A CONTINUING CONSPIRACY BEGINNING ON OR ABOUT JANUARY 30, 1976 AND CONTINUING TO ON OR ABOUT JANUARY 4, 1980 TO DENY TO PLAINTIFF CIVIL RIGHTS CAUSING INJURY TO PLAINTIFF, WITH THE LAST OVERT CONSPIRATORIAL ACTS OF DEFENDANTS, ACTIVELY AND VICARIOUSLY, BEING ON THE DATES OF ON OR ABOUT NOVEMBER 1, 1979 AND JANUARY 4, 1980 AS SET OUT BELOW.

10. VENUE LIES IN THIS COURT PURSUANT TO 28 USC 1391 (B) SINCE THE CLAIMS SET OUT IN THIS ACTION AROSE WITHIN THE JURISDICTIONAL AREA OF THIS DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

11. VENUE LIES IN THIS COURT AS TO CORPORATE DEFENDANT LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON HEREINAFTER CALLED LINCOLN PURSUANT TO 28 USC 1391 (C) SINCE LINCOLN, ACCORDING TO THE BEST KNOWLEDGE AND BELIEF OF PLAINTIFF, HAS AND DOES NOW DO BUSINES ON A REGULAR BASIS WITHIN THE JURISDICTIONAL AREA OF THIS DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS EITHER DIRECTLY OR BY AND THROUGH ITS AGENT AMERICAN MORTGAGE COMPANY, HOUSTON, TEXAS AND OR OTHERS WHO COLLECT MONIES ON A REGULAR BASIS FOR THE BENEFIT OF LINCOLN. LINCOLN AS WILL BE SET OUT BELOW HAS APPEARED IN THE HOUSTON DIVISION, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS IN BANKRUPTCY NO. 76-HP-353 A CASE STILL OPEN ON THE DATE OF FILING OF THIS ACTION AND WHICH CASE IS DIRECT SUBJECT MATTER IN THIS ACTION.

LINCOLN APPEARED IN ONE INSTANCE IN BANKRUPTCY NO. 76-HP-353 BY AND THROUGH ITS AGENT, AMERICAN MORTGAGE COMPANY, HOUSTON, TEXAS AND APPEARED IN ANOTHER INSTANCE BY AND THROUGH ROBERT I. WATKINS, VICE PRESIDENT OF LINCOLN OF WEST 818 RIVERSIDE, SPOKANE, WASHINGTON, WITH THE ADDRESS OF ROBERT I. WATKINS BEING SHOWN AS 2625 LOUISIANA, HOUSTON, TEXAS. FURTHERMORE, LINCOLN BY AND THROUGH ITS AGENTS AND ATTORNEYS IN HOUSTON, TEXAS ON A REGULAR BASIS, FOR THE BENEFIT OF LINCOLN, HAS ACTED IN CONSPIRACY TO DENY CIVIL RIGHTS TO THE INJURY OF PLAINTIFF AS WILL BE SET OUT BELOW AND BY LETTER DATED NOVEMBER 15, 1978 ACTED TO ADVISE ITS FELLOW CONSPIRATORS OF A SUGGESTED PLAN TO ACT OUT THE CONSPIRACY AGAINST PLAINTIFF AND WHICH ACTS OF LINCOLN ARE DIRECT SUBJECT MATTER IN THIS ACTION.

PARTIES

1. WARREN G. WELLS, SR., HEREINAFTER CALLED PLAINTIFF IS, AND WAS AT ALL TIMES HEREAFTER MENTIONED, DOMICILED IN AND A CITIZEN OF THE STATE OF TEXAS.

2. DEFENDANTS SIDNEY J. BROWN, HEREAFTER CALLED BROWN; LOGENE FOSTER HEREAFTER CALLED FOSTER; MARY WELLS HEREAFTER CALLED MARY WELLS; JAMES S. WHITWORTH HEREAFTER CALLED WHITWORTH; IRENE WLECZYK HEREAFTER CALLED WLECZYK; E. J. MEUAX HEREAFTER CALLED MEUAX; C. D. McDOWELL HEREAFTER CALLED MCDOWELL; BETTY M. McDOWELL HEREAFTER CALLED BETTY MCDOWELL, WERE AT ALL TIMES HEREAFTER MENTIONED DOMICILED IN AND WERE CITIZENS OF THE STATE OF TEXAS.

3. DEFENDANT LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON HEREAFTER CALLED LINCOLN WAS AND IS NOW TO THE BEST KNOWLEDGE OF

PLAINTIFF AND WAS AT ALL TIMES HEREAFTER MENTIONED, A CORPORATION OR ASSOCIATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF WASHINGTON HAVING ITS PRINCIPAL PLACE OF BUSINESS AT WEST 818 RIVERSIDE, SPOKANE, WASHINGTON, BUT DOING BUSINESS ON A REGULAR BASIS AS AFORESAID WITHIN THE JURISDICTIONAL AREA OF THE HOUSTON DIVISION, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

FIRST COUNT

PLAINTIFF COMPLAINS AGAINST DEFENDANT BROWN AND FOR A FIRST CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND BROWN AFORESAID AND THE JURISDICTIONAL STATEMENTS AFORESAID ARE MADE A PART HEREOF BY THIS REFERENCE.

2. DECLARATORY JUDGMENT IS SOUGHT DECLARING THE ACTIONS OF DEFENDANT TAKEN UNDER COLOR OF LAW INVALID, ILLEGAL AND

IN DEPRIVATION TO PLAINTIFF OF PLAINTIFF'S RIGHTS, PRIVILEGES AND IMMUNITIES SECURED TO PLAINTIFF BY THE CONSTITUTION OF THE UNITED STATES AND BY THE FIRST, SEVENTH AND FOURTEENTH AMENDMENTS THERETO. SUCH ACTIONS ARE ADDITIONALLY ASSERTED TO BE IN VIOLATION OF STATUTES OF THE UNITED STATES AS SET OUT BELOW. THE JUDGMENTS OF THE 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS AS ENTERED IN CAUSE 30,035 THEREIN ARE ARBITRARY, IMPERMISSIBLY BIASED AND WITHOUT BASIS IN FACT OR LAW AND THEY ARE NOT AUTHORIZED BY ANY LAW OR STATUTE OF THE STATE OF TEXAS AND ARE CONTRARY TO THE SETTLED LAW OF THE STATE OF TEXAS ACCORDING TO DECISIONS OF THE HIGHEST STATE COURT AND ARE PROHIBITED BY THE CONSTITUTION OF THE STATE OF TEXAS.

3. DEFENDANT BROWN OUTSIDE HIS JURISDICTION WHILE PURPORTING TO ACT AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT

BEND COUNTY, TEXAS, UNDER COLOR OF LAW, DID SIGN AND CAUSE TO BE ENTERED IN SAID COURT A JUDGMENT AND DECREE OF DIVORCE BETWEEN PLAINTIFF AND MARY WELLS IN CAUSE NUMBER 30,035, WHICH JUDGMENT STATES IN PART:

> "ON THIS THE 6TH DAY OF SEPTEMBER TRIAL ON THE MERITS WAS HELD IN THIS CAUSE."

4. PLAINTIFF SHOWS THE COURT THAT ON THE 6TH DAY OF SEPTEMBER 1977 ALL OF PLAINTIFF'S PROPERTY WAS EXCLUSIVELY IN THE POSSESSION AND CUSTODY OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION BANKRUPTCY NO. 76-HP-353, IN RE WARREN G. WELLS, SR.,ETC. PLAINTIFF'S PROPERTY DID NOT COME INTO THE POSSESSION AND CUSTODY OF BROWN'S COURT AFORESAID UNTIL DECEMBER 9, 1977, WHICH DATE WAS 15 DAYS AFTER THE DATE OF THE TRUSTEE'S REPORT OF EXEMPT PROPERTY AS FILED IN BANKRUPTCY NO.

76-HP-353 AND WHICH DATE OF DECEMBER 9, 1977 WAS MORE THAN THREE MONTHS AFTER SEPTEMBER 6, 1977 THE DATE UPON WHICH THE AFORESAID TRIAL ON THE MERITS WAS HELD WHICH RESULTED IN THE AFOREMENTIONED JUDGMENT AND DECREE OF DIVORCE.

5. PLAINTIFF SHOWS THAT BROWN ACTED KNOWINGLY IN BAD FAITH AND MALICIOUSLY WITH A WANTON AND RECKLESS DISREGARD FOR THE RIGHTS OF PLAINTIFF AND THAT BROWN ACTED IN USURPATION OF THE JURISDICTION OF THE UNITED STATES DISTRICT COURT AFORESAID. BROWN'S ACTS WERE WITHOUT STATUTORY OR CONSTITUTIONAL AUTHORITY AND WERE CONTRARY TO LONG SETTLED TEXAS LAW AS SAID BY THE TEXAS SUPREME COURT IN FIRST SOUTHERN PROPERTIES, INC. V. VALLONE, 533 SW2D 339, 343 (1975).

6. PLAINTIFF ASSERTS THAT THE AFORESAID DOCUMENT TITLED JUDGMENT AND DECREE OF DIVORCE AS FILED IN CAUSE NUMBER

30,035, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS AS SIGNED ON JANUARY 11, 1978 IS ABSOLUTELY VOID.

7. PLAINTIFF SHOWS THAT A DECLARATION BY THIS COURT THAT THE AFORESAID JUDGMENT OF BROWN IS VOID WILL SERVE THE USEFUL PURPOSE OF CLARIFYING AND SETTLING LEGAL RELATIONS REGARDING THE SUBJECT JUDGMENT AND WILL AFFORD RELIEF FROM UNCERTAINTY, INSECURITY AND CONTROVERSY PRESENTLY EXISTING REGARDING THE SUBJECT JUDGMENT. PLAINTIFF HAS NO OTHER PLAIN AND EFFECTIVE METHOD OF RELIEF.

SECOND COUNT

PLAINTIFF COMPLAINS AGAINST DEFENDANT BROWN AND FOR A SECOND CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE OF PLAINTIFF AND BROWN AFORESAID AND THE JURISDICTIONAL STATEMENTS AFORESAID ARE MADE A PART HEREOF BY THIS REFERENCE.

2. THE MATTER CONTAINED IN THE FIRST COUNT ABOVE IS MADE A PART HEREOF.

3. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENT WHICH IS THE SUBJECT OF THE FIRST COUNT ABOVE IS VOID FOR THE REASONS SO STATED IN THE FIST COUNT, PLAINTIFF ASSERTS THAT BROWN KNOWINGLY, MALICIOUSLY AND WITH BAD FAITH WITH A WANTON AND RECK-LESS DISREGARD FOR THE RIGHTS OF PLAINTIFF IN VOILATION OF ARTICLE 1, SECTION 3, AND ARTICLE 1, SECTION 15 AND ARTICLE 1, SECTION 19 OF THE CONSTITUTION OF THE STATE OF TEXAS, DID DENY TO PLAINTIFF DUE PROCESS AND EQUALITY UNDER THE LAW BY DENY-ING TO PLAINTIFF A JURY TRIAL AFTER THE 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS HAD PROPERLY ACQUIRED STA-TUTORY POSSESSION AND CUSTODY OF PLAINTIFF'S PROPERTY. IT IS ASSERTED THAT ANY JURY TRIAL PRIOR TO PROPER JURISDICTION BEING AEQUIRED IS NOT THE JURY TRIAL

AS IS SECURED BY THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF TEXAS.

4. PLAINTIFF SHOWS THAT HE HAD MADE A PROPER DEMAND FOR A JURY TRIAL AND HAD PAID THE REQUIRED FEE THEREFOR IN A TIMELY MANNER IN THE 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS IN CAUSE NUMBER 30,035.

5. PLAINTIFF ASSERTS THAT THE JUDGMENT AND DECREE OF DIVORCE ENTERED AS A RESULT OF THE PURPORTED TRIAL ON THE MERITS ON THE 6TH DAY OF SEPTEMBER 1977 IN CAUSE NUMBER 30,035 IS ABSOLUTELY VOID.

6. PARAGRAPH 7. AFORESAID UNDER THE FIRST COUNT IS MADE A PART HEREOF.

THIRD COUNT

PLAINTIFF COMPLAINS AGAINST DEFENDANT BROWN AND FOR A THIRD CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS AND

JURISDICTIONAL MATTER AFORESAID IS MADE A PART HEREOF BY THIS REFERENCE.

2. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENT AND DECREE OF DIVORCE ACCORDING TO THE "TRIAL ON THE MERITS" ON THE 6TH DAY OF SEPTEMBER 1977 AND SIGNED ON THE 11TH DAY OF JANUARY 1978 IS VOID FOR THE REASONS ALREADY SET OUT IN THE FIRST AND SECOND COUNTS ABOVE, IT IS FURTHER ASSERTED THAT THE SAID JUDGMENT AND DECREE OF DIVORCE IS VOID AS A CONSEQUENCE OF THE VIOLATION BY BROWN OF THE DOCTRINE OF SEPARATION OF CHURCH AND STATE IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES AND THE FIRST AMENDMENT THERETO AND OF ARTICLE 1, SECTION 3A AND ARTICLE 1, SECTION 4 AND ARTICLE 1, SECTION 5 AND ARTICLE 1, SECTION 6 OF THE CONSTITUTION OF THE STATE OF TEXAS BECAUSE OF A RELIGIOUS TEST GIVEN TO EACH MEMBER OF THE JURY AS A QUALIFICATION FOR THE OFFICE OF JUROR, PRIOR TO THE TRIAL ON

THE 6TH DAY OF SEPTEMBER 1977 WHERE EACH MEMBER OF THE JURY WAS REQUIRED TO STATE HIS RELIGIOUS PREFERENCE PRIOR TO BEING PERMITTED TO SERVE ON THE SUBJECT JURY.

3. PARAGRAPH 7. AFORESAID UNDER THE FIRST COUNT IS MADE A PART HEREOF.

FOURTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A FOURTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS AND JURISDICTIONAL MATTER AFORESAID IS MADE A PART HEREOF.

2. THE MATTER CONTAINED IN THE FIRST, SECOND AND THIRD COUNTS ABOVE IS MADE A PART HEREOF.

3. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENT SIGNED ON JANUARY 11, 1978 IS VOID FOR THE REASONS SET OUT IN THE PRECEEDING COUNTS, IT IS ASSERTED THAT THE SUBJECT JUDGMENT IS ABSOLUTELY VOID BECAUSE

OF THE ACTIONS, UNDER COLOR OF LAW, WHEREBY BROWN ANNOUNCED TO THE NON-JEWISH JURY AS DISCLOSED BY THE AFOREMENTIONED RELIGIOUS TEST AS GIVEN BY BROWN, DURING THE COURSE OF THE TRIAL ON TWO SEPARATE OCCASIONS THAT PLAINTIFF'S ATTORNEY WAS OF THE JEWISH RELIGION. THE ANNOUNCEMENTS BY BROWN WITHOUT JUST CAUSE AND WHERE RELIGION WAS NOT AN ISSUE IN THE PROCEEDINGS, WERE MADE IN A DETAILED MANNER IN THE PRESENCE OF THE JURY WITH QUESTIONS TO PLAINTIFF'S ATTORNEY CONCERNING THE SUBJECT JEWISH HIGH HOLY DAYS. SUCH ANNOUNCEMENTS AND QUESTIONS, HAVING NO RELATION TO THE PROCEEDINGS CONCERNING PLAINTIFF, WERE MADE IN A RECKLESS AND MALICIOUS MANNER WITH WANTON DISREGARD FOR THE RIGHTS OF PLAINTIFF AND WERE MADE IN SUCH A WAY AND WERE CALCULATED TO PREJUDICE THE NON-JEWISH JURY AGAINST PLAINTIFF, ALL IN VOILATION OF THE CONSTITUTION OF THE UNITED STATES AND THE DOCTRINE OF

SEPARATION OF CHURCH AND STATE THEREUNDER, AND IN VOILATION OF THE FIRST AND SEVENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THE COMMON LAW THEREUNDER, AS TO RELIGIOUS FREEDOM AND AS TO THE PLAINTIFF'S RIGHT OF PRIVACY REGARDING THE RELIGION OF HIS ATTORNEY, AND AS TO PLAINTIFF'S RIGHT TO TRIAL BY AN IMPARTIAL JURY. SUCH ACTS AFORESAID WERE IN VIOLATION OF THE CONSTITUTION OF THE STATE OF TEXAS AS TO THE DOCTRINE OF SEPARATION OF CHURCH AND STATE THEREUNDER AND THE RIGHT TO TRIAL BY AN IMPARTIAL JURY.

4. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

FIFTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A FIFTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS AND JURISDICTIONAL MATTER AFORESAID ALONG WITH

THE MATTER CONTAINED IN THE PRECEDING COUNTS IS MADE A PART HEREOF.

2. DEFENDANT BROWN WAS DISQUALIFIED AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS TO HEAR THE AFORESAID CAUSE NUMBER 30,035 BY VIRTUE OF THE FACT THAT BROWN GAVE ADVICE TO MARY WELLS ON MATTERS RELATING TO THE PROCEEDINGS INVOLVED IN THE SUBJECT CAUSE NUMBER 30,035 AT VARIOUS TIMES DURING THE PERIOD BEGINNING ON OR ABOUT JANUARY 30, 1976 AND ENDING ON OR ABOUT JANUARY 4, 1980. ONE EXAMPLE OF SUCH ADVICE WAS IN THE CHAMBERS OF BROWN PRIOR TO THE TEMPORARY ORDER OF FEBRUARY 26, 1976 IN CAUSE NUMBER 30,035 IN THE PRESENCE OF PLAINTIFF AND PLAINTIFF'S ATTORNEY AND THE ATTORNEY FOR MARY WELLS WHERE BROWN ADVISED MARY WELLS "YOU SURE CAN'T DIVIDE WITH HIM WHAT YOU DON'T HAVE WHEN THE TRIAL COMES." OR SIMILAR WORDS TO THE SAME EFFECT. IT IS

SHOWN THAT UNDER TEXAS LAW THE ATTORNEY-CLIENT RELATIONSHIP IS INFERRED AND BROWN BY SUCH CONDUCT BECAME DISQUALIFIED AS JUDGE TO HEAR THE SUBJECT CAUSE NUMBER 30,035 PURSUANT TO ARTICLE 5, SECTION 11 OF THE CONSTITUTION OF THE STATE OF TEXAS.

3. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENT AND DECREE OF DIVORCE SIGNED ON JANUARY 11, 1978 IS ABSOLUTELY VOID FOR THE REASONS STATED IN THE PRECEEDING COUNTS IT IS MAINTAINED THAT THE JUDGMENTS IN CAUSE NUMBER 30,035 ARE ALL ABSOLUTELY VOID FOR THE REASONS STATED HEREIN. LIKEWISE ALL JUDICIAL ACTS TAKEN BY BROWN IN THE SUBJECT CAUSE NUMBER 30,035 ARE ASSERTED TO BE ABSOLUTELY VOID, INCLUDING BUT NOT LIMITED TO THE TEMPORARY ORDER OF FEBRUARY 26, 1976, AND THE JUDGMENT AND DECREE OF DIVORCE OF JANUARY 11, 1978 AND THE ORDER DISCHARGING RECEIVER OF NOVEMBER 1, 1979.

4. IT IS ASSERTED THAT ALL JUDICIAL ACTS ATTEMPTED TO HAVE BEEN PERFORMED BY BROWN IN CAUSE NUMBER 30,035 ARE NULLITIES WITH THE CASE BEING LEFT UNDISPOSED OF AS COMPLETELY AS IF THE JUDGE HAD NOT BEEN PRESENT AT COURT .

5. IT IS SHOWN THAT BROWN FAILED AND REFUSED TO RECUSE HIMSELF OR GRANT A CHANGE IN VENUE UPON MOTIONS DULY MADE AND FILED IN CAUSE NUMBER 30,035.

6. PARAGRAPH 7. UNDER THE FIRST COUNT IS MADE A PART HEREOF.

SIXTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A SIXTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND FOREGOING MATTER IN THE PRECEEDING COUNTS IS MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENTS ENTERED BY BROWN IN CAUSE NUMBER 30,035 ARE ABSOLUTELY VOID FOR THE REASONS AFORESAID, IT IS ASSERTED THAT THE ORDER DISCHARGING RECEIVER AS ENTERED IN SAID CAUSE NUMBER 30,035 BY BROWN AND SIGNED BY HIM ON NOVEMBER 1, 1979 IS VOID IN THAT THE ORDER DISCHARGING RECEIVER IS A CONTEMPT ORDER WHICH FINES PLAINTIFF FOR VIOLATIONS OF THE AFORESAID JUDGMENT AND DECREE OF DIVORCE OF AN AMOUNT IN EXCESS OF $10,000.00 WHERE NO NOTICE OF A CONTEMPT HEARING WAS GIVEN TO PLAINTIFF WHERE PLAINTIFF COULD CONTROVERT THE CHARGES MADE AGAINST HIM. IT IS MAINTAINED THAT THE ORDER DISCHARGING RECEIVER OF NOVEMBER 1, 1979 IS ABSOLUTELY VOID AS A VIOLATION OF DUE PROCESS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND BY THE CONSTITUTION OF THE STATE OF TEXAS.

3. ONE OF THE CHARGES MADE AGAINST PLAINTIFF IN THE CONTEMPT ORDER OF NOVEMBER 1, 1979 AND FOR WHICH PLAINTIFF WAS FINED WAS THAT PLAINTIFF DID NOT SURRENDER HIS HOMESTEAD TO WHITWORTH AS RECEIVER FOR BROWN'S COURT WITHIN 10 DAYS AFTER JANUARY 11, 1978. IT IS SHOWN THAT WHITWORTH MADE NO DEMAND PREVIOUS TO HIS LETTER OF OCTOBER 25, 1978 FOR THE SAID SURRENDER AND THAT THE SAID LETTER CONTAINED NO DEMANDED SURRENDER DATE. WHITWORTH DID NOT APPEAR TO TAKE POSSESSION OF PLAINTIFF'S HOMESTEAD UNTIL ON OR ABOUT NOVEMBER 17, 1978 WHEN WHITWORTH WITHOUT OTHER PREVIOUS NOTICE LOCKED PLAINTIFF OUT OF HIS HOMESTEAD AND AWAY FROM PLAINTIFF'S FEW REMAINING POSSESSIONS WHILE PLAINTIFF WAS AT WORK.

4. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

SEVENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN

AND AS A SEVENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND BROWN AFORESAID ALONG WITH THE JURISDICTIONAL STATEMENTS AND THE FOREGOING MATTER IN THE PRECEEDING COUNTS IS MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL THE JUDGMENTS ENTERED BY BROWN IN CAUSE NUMBER 30,035 ARE ABSOLUTELY VOID FOR THE REASONS AFORESAID IN THE PRECEEDING COUNTS IT IS HERE ASSERTED THAT THE JUDGMENT AND DECREE OF DIVORCE SIGNED BY BROWN ON JANUARY 11, 1978 AND THE ORDER DISCHARGING RECEIVER SIGNED BY BROWN ON NOVEMBER 1, 1979 ARE ABSOLUTELY VOID FOR THE REASONS THAT SAID JUDGMENTS OF BROWN ADJUDGE PLAINTIFF PERSONALLY LIABLE FOR DEBTS PREVIOUSLY DISCHARGED IN BANKRUPTCY NO. 76-HP-353, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

3. A COPY OF PLAINTIFF'S DISCHARGE OF BANKRUPT WAS FILED IN CAUSE NUMBER 30,035 IN THE 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS AND SAID DISCHARGE OF BANKRUPT CONTAINS THE FOLLOWING PROVISIONS:

> " ...2.ANY JUDGMENT HERETOFORE OR HEREAFTER OBTAINED IN ANY COURT OTHER THAN THIS COURT IS NULL AND VOID AS A DETERMINATION OF THE PERSONAL LIABILITY OF THE BANKRUPT WITH RESPECT TO ANY OF THE FOLLOWING:
> (A) DEBTS DISCHARGEABLE UNDER SECTION 17A AND B OF THE BANKRUPTCY ACT;... "

4. BROWN KNOWINGLY AND MALICIOUSLY AND IN BAD FAITH IN THE FACE OF THE FOREGOING QUOTED PROVISIONS OF THE PLAINTIFF'S DISCHARGE IN BANKRUPTCY AND IN THE FACE OF THE FINDINGS OF THE JURY IN THE " TRIAL ON THE MERITS " OF THE 6TH DAY OF SEPTEMBER 1977 OF " NO EVIDENCE " ADJUDGED PLAINTIFF PERSONALLY LIABLE FOR DEBTS ALREADY DISCHARGED AS AFORESAID.

5. BROWN KNOWINGLY AND MALICIOUSLY AND IN BAD FAITH ACTED AS ABOVE IN SPITE OF THE INJUNCTIVE PROVISIONS OF THE DISCHARGE OF BANKRUPT AS WAS FILED IN HIS COURT AND SUCH ACTS WERE A USURPATION OF THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

6. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

EIGHTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS AN EIGHTH COUNT FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER IN THE PRECEEDING COUNTS IS MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL THE JUDGMENTS ENTERED BY BROWN IN CAUSE

NUMBER 30,035 AFORESAID ARE ABSOLUTELY VOID FOR THE REASONS ABOVE STATED, IT IS HERE ASSERTED THAT THE TEMPORARY ORDER OF FEBRUARY 26, 1976 IS ABSOLUTELY VOID AS AN INSTRUMENT OF GENDER BASED SEX DISCRIMINATION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1, SECTION 3A OF THE CONSTITUTION OF THE STATE OF TEXAS.

3. ON FEBRUARY 26, 1976 AT THE TIME OF THE TEMPORARY ORDER IN CAUSE NUMBER 30,035, SECTION 3.59 OF THE TEXAS FAMILY CODE PROVIDED:

> "3.59. TEMPORARY SUPPORT
> AFTER A PETITION FOR DIVORCE OR ANNULMENT IS FILED, THE JUDGE, AFTER DUE NOTICE MAY ORDER PAYMENTS FOR THE SUPPORT OF THE WIFE OR FOR THE SUPPORT OF THE HUSBAND, IF HE IS UNABLE TO SUPPORT HIMSELF, UNTIL A FINAL DECREE IS ENTERED."

4. IT IS SHOWN THAT THE STATEMENT "IF HE IS UNABLE TO SUPPORT HIMSELF," HAS NOW BEEN EXCLUDED FROM SECTION 3.59 OF THE

TEXAS FAMILY CODE BY AMENDMENT BY THE TEXAS LEGISLATURE AND IT IS ASSERTED THAT SECTION 3.59 OF THE TEXAS FAMILY CODE AS IT WAS APPLIED TO MATTERS INVOLVING PLAINTIFF WAS UNCONSTITUTIONAL GENDER BASED SEX DISCRIMINATION.

5. UNDER AUTHORITY OF THE AFORESAID SECTION 3.59 OF THE TEXAS FAMILY CODE BROWN BY TEMPORARY ORDER OF FEBRUARY 26, 1976 GRANTED TO MARY WELLS $1,550.00 PER MONTH FROM THE COMMUNITY ASSETS PLUS COMPLETE CUSTODY AND CONTROL OF ALL THE LIQUID COMMUNITY ESTATE ASSETS AND OF ALL THE COMMUNITY ESTATE INCOME PRODUCING ASSETS WHILE AT THE SAME TIME GRANTING TO PLAINTIFF NOTHING.

6. IT IS SHOWN THAT MARY WELLS RECEIVED THE BENEFITS AS ABOVE FOR THE PERIOD FEBRUARY 26, 1976 TO JANUARY 11, 1978, AND THAT MARY WELLS STILL HOLDS THESE ASSETS AND WHICH ASSETS ALONG WITH

CONTINUOUS EARNINGS FROM SUCH ASSETS AMOUNT TO AN AMOUNT IN EXCESS OF $200,000.00 TO THE INJURY OF PLAINTIFF WHO RECEIVED NOTHING FROM THE ACCUMULATED BUSINESS ASSETS OF 9 YEARS OF MARRIAGE.

7. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

NINTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN, WHITWORTH, LINCOLN, MARY WELLS, MCDOWELL, BETTY MCDOWELL AND AS A NINTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF THE DEFENDANTS AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ABOVE IS MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS STATED IN

THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT THE ORDER DISCHARGING RECEIVER OF NOVEMBER 1, 1979 IS VOID AS A VIOLATION OF DUE PROCESS AS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1, SECTION 3 OF THE CONSTITUTION OF THE STATE OF TEXAS IN THAT WHITWORTH, AT THE REQUEST OF LINCOLN WITHOUT PRIOR JUDICIAL HEARING OR AUTHORITY OR PROCESS OF ANY NATURE, PAID TO LINCOLN APPROXIMATELY $20,000.00 MORE THAN THE $47,000.00 AS FOUND TO BE DUE ON THE MORTGAGE NOTE ON PLAINTIFF'S HOMESTEAD BY THE JURY AT THE SEPTEMBER 6, 1977 TRIAL ON THE MERITS . LINCOLN DID NOT INTERVENE IN CAUSE NUMBER 30,035 AND AT NO TIME OR PLACE DID ANY COURT MAKE A DETERMINATION OF THE PROPER AMOUNT DUE LINCOLN EXCEPT THE TRIAL ON THE MERITS OF THE 6TH DAY OF SEPTEMBER 1977, YET WHITWORTH ON HIS OWN AUTHORITY PAID TO LINCOLN THE AMOUNT OF $66,584.65

WHERE THE AMOUNT FOUND BY THE JURY WAS $47,000.00.

3. PART OF THE EXCESS AMOUNT PAID TO LINCOLN BY WHITWORTH, AS ABOVE, WAS MORE THAN $6,000.00 AS A PENALTY CHARGED BY LINCOLN FOR HAVING TO COLLECT THE MORTGAGE THROUGH BANKRUPTCY WHEN IN FACT THE MORTGAGE NOTE WAS NOT COLLECTED THROUGH BANKRUTPCY.

4. THE JURY IN CAUSE 30,035 FOUND AND THE JUDGMENT OF BROWN SIGNED ON JANUARY 11, 1978 LIKEWISE HELD, THAT ONLY ONE HALF OF THE $47,000.00 HOMESTEAD NOTE WAS DUE FROM PLAINTIFF AND THE OTHER ONE HALF OF THE SAID NOTE WAS DUE FROM MARY WELLS, ACCORDINGLY SINCE ALL PERSONAL LIABILITY AS TO THE SAID NOTE HAD BEEN DISCHARGED IN BANKRUTPCY AS TO PLAINTIFF, WHITWORTH HAD AUTHORITY, IF ANY HE HAD, TO PAY ONLY $23,500.00 TO LINCOLN, BUT WHITWORTH IN USURPATION OF JUDICIAL AUTHORITY PAID TO LINCOLN THE ENTIRE $47,000.00 PLUS CHARGES

AND PENALTIES FOR A TOTAL OF $66,584.65 AS ABOVE. WHILE PLAINTIFF ASSERTS THAT NO AMOUNT WAS DUE TO LINCOLN FOR THE REASONS SET OUT IN THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT THE PAYMENT MADE TO LINCOLN BY WHITWORTH WERE WRONGFUL.

5. IT IS SHOWN THAT THE MORTGAGE NOTE ON PLAINTIFF'S HOMESTEAD WAS NOT OVERDUE OR IN DEFAULT AT THE BEGINNING OF THE LEGAL PROCEEDINGS IN CAUSE 30,035 AND ANY DELAY OR DEFAULT IN PAYMENT TO LINCOLN OCCURRED WHILE THE MATTER WAS IN LEGAL CUSTODY IN THE BANKRUTPCY COURT OR THE DIVORCE COURT AND ANY DELAY OR DEFAULT IN PAYMENT WAS A MATTER OF THE OPERATION OF THE LAW AND NOT CHARGEABLE TO PLAINTIFF WHO HAD NO CONTROL IN THE MATTER, WHETHER OR NOT ANY AMOUNT WHATSOEVER IS ENFORCEABLE AGAINST ANYONE IN THE MATTER OF THE MORTGAGE NOTE. IT IS ASSERTED THAT NO PENALTIES, FEES, ACCELERATED INTEREST OR OTHER

CHARGES OF LIKE NATURE COULD BE PROPERLY ADDED TO THE SUBJECT MORTGAGE NOTE WHILE THE MATTER WAS IN LEGAL CUSTODY.

6. FURTHERMORE, IN ADDITION TO THE AMOUNT PAID TO LINCOLN AS ABOVE, WHITWORTH WITHOUT JUDICIAL HEARING OF ANY NATURE, ON HIS OWN AUTHORITY PAID TO MARY WELLS FROM THE PROCEEDS OF THE SALE OF PLAINTIFF'S HOMESTEAD WHICH WOULD OTHERWISE BELONG TO PLAINTIFF, AN AMOUNT OF $1,887.70 ON A JUDGMENT GOTTEN BY MARY WELLS AGAINST WARREN A. WELLS. PLAINTIFF SHOWS THAT PLAINTIFF HAS NEVER BEEN KNOWN AS WARREN A. WELLS; THAT WHITWORTH HAD NO AUTHORITY TO MAKE A JUDICIAL DETERMINATION THAT THE JUDGMENT WAS DUE FROM PLAINTIFF; THAT A JUDGMENT LIEN AGAINST REAL ESTATE CAN NOT BE ENFORCED UNLESS IN THE EXACT NAME AS THE REAL ESTATE IS HELD AND THAT THE PROCEEDS FROM THE SALE OF A HOMESTEAD ARE PROTECTED FROM LEGAL LEVY FOR A PERIOD OF

SIX MONTHS AFTER THE PROCEEDS OF SUCH SALE COME INTO THE POSSESSION OF THE OWNER OF THE HOMESTEAD AS IS SETTLED TEXAS LAW. PLAINTIFF SHOWS THAT THE PROCEEDS FROM THE SALE NEVER DID COME INTO THE HANDS OF PLAINTIFF AND THAT MARY WELLS WAS PAID THE AMOUNT OF THE JUDGMENT BY WHITWORTH SOME SIX MONTHS PRIOR TO THE TIME ANY FUNDS CAME INTO THE POSSESSION OF PLAINTIFF.

7. FURTHERMORE, IN ADDITION TO THE ABOVE, TO THE INJURY OF PLAINTIFF, WHITWORTH, OUTSIDE HIS AUTHORITY, AT THE REQUEST OF MCDOWELL AND BETTY MCDOWELL PAID OUT OF THE PROCEEDS OF THE SALE OF PLAINTIFF'S HOMESTEAD $2,000.00 AS A LOAN FEE OR LOAN DISCOUNT FOR THE BENEFIT OF MCDOWELL AND BETTY MCDOWELL IN THE SECURING BY MCDOWELL AND BETTY MCDOWELL OF A LOAN WITH WHICH TO PURCHASE PLAINTIFF'S HOMESTEAD. IT IS ASSERTED THAT ANY CHARGES MADE TO SECURE A LOAN BY THE MCDOWELL'S BELONGS TO THE

MCDOWELL'S AND THAT PLAINTIFF HAS NO OBLIGATIONS IN THE SECURING OF THE MCDOWELL LOAN. THE FOREGOING IS ASSERTED AS A WRONGFUL TAKING OR CONVERSION OF PLAINTIFF'S MONEY.

8. IT IS ASSERTED THAT THE OTHER PAYMENTS MADE BY WHITWORTH FROM THE PROCEEDS OF THE HOMESTEAD SALE WERE A WRONGFUL TAKING OR CONVERSION OF PLAINTIFF'S MONEY.

9. IT IS ASSERTED THAT THE JUDICIAL ACTS TAKEN BY WHITWORTH AS ABOVE AND THE OTHER WRONGFUL ACTS SET OUT WERE TAKEN BY WHITWORTH WITHOUT STATUTORIAL OR CONSTITUTIONAL AUTHORITY AND ANY LATER CONFIRMATION BY BROWN AS IN THE ORDER DISCHARGING RECEIVER AS SIGNED BY BROWN ON NOVEMBER 1, 1979 COULD NOT SUPPLY THE STATUTORIAL OR CONSTITUTIONAL AUTHORITY WHICH WAS LACKING SOME MONTHS PRIOR TO NOVEMBER 1, 1979 WHEN WHITWORTH TOOK THE UNCONSTITUTIONAL

ACTION.

10. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

TENTH COUNT

PLAINTIFF COMPLAINS AGAINST WHITWORTH AND BROWN AND AS A TENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF WHITWORTH AND BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL THE JUDGMENTS OF BROWN ARE ABSOLUTELY VOID FOR THE REASONS STATED IN THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT THE TAKING OF PLAINTIFF'S HOMESTEAD FROM PLAINTIFF BY WHITWORTH BY LOCKING PLAINTIFF OUT OF SAID HOMESTEAD AND AWAY FROM THE FEW REMAINING POSSESSIONS OF PLAINTIFF, WHILE PLAINTIFF WAS

AT WORK, WITHOUT FURTHER JUDICIAL ACTION OR PROCESS IN THE MANNER OF FINDING BY A PROPER COURT THAT PLAINTIFF WAS IN CONTEMPT OF THE PROPER ORDER OF A PROPER COURT WAS A VIOLATION BY WHITWORTH OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES TO THE INJURY OF PLAINTIFF. IT IS SHOWN THAT NO AFTER THE FACT CONFIRMATION BY BROWN AS IN THE ORDER DISCHARGING RECEIVER OF NOVEMBER 1, 1979 COULD SUPPLY THE AUTHORITY WHICH WAS LACKING AT THE TIME WHITWORTH TOOK THE UNCONSTITUTIONAL ACTION.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

ELEVENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS AN ELEVENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE

JURISDICTIONAL MATTER AND THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS STATED IN THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID IN THAT BROWN HAD AN IMMEDIATE AND DIRECT FINANCIAL INTEREST IN THE OUTCOME OF CAUSE 30,035.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

TWELFTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A TWELFTH CLAIM FOR DECLARATORY RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A

PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS STATED IN THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT ALL JUDGMENTS BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID IN THAT BROWN UTILIZED THE SAID JUDGMENTS FOR THE WRONGFUL PURPOSE OF FORCING PLAINTIFF INTO BANKRUPTCY AND LEAVING PLAINTIFF DESTITUTE, AND AT THE SAME TIME STRENGTHENING THE POSITION OF MARY WELLS TO THE INJURY OF PLAINTIFF AND THE COMMUNITY CREDITORS OF THE COMMUNITY ESTATE OF PLAINTIFF AND MARY WELLS, AND AT THE SAME TIME IMPEDING, HINDERING AND OBSTRUCTING THE "FRESH START" OF PLAINTIFF IN ACCORDANCE WITH THE PRINCIPLES OF THE BANKRUPTCY ACT. THE FOREGOING IS ASSERTED TO BE A VIOLATION OF EQUALITY UNDER THE LAW AS IS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION

OF THE UNITED STATES, AND THE CONSTITUTION OF THE STATE OF TEXAS.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PERT HEREOF.

THIRTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A THIRTEENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS AND JURISDICTIONAL MATTER ALONG WITH THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL JUDGMENTS ENTERED BY BROWN IN CAUSE 30,035 ARE VOID FOR THE REASONS AFORESAID IT IS HERE ASSERTED THAT ALL JUDGMENTS ENTERED BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID IN THAT THE TEMPORARY ORDER OF FEBRUARY 26, 1976 CONTAINED PROVISIONS ENJOINING PLAINTIFF AND MARY WELLS FROM COMMUNICATING WITH EACH OTHER IN ANY

MANNER WHATSOEVER, ALTHOUGH THERE WERE NO PLEADINGS FOR SUCH AN INJUNCTION, THEREBY INTERFEREING WITH A POSSIBLE SETTLEMENT OF THE ISSUES IN CAUSE 30,035, ESPECIALLY SINCE THERE HAD BEEN A PAROL PARTITION OF THE PROPERTY OF THE PARTIES. SUCH INJUNCTION AFORESAID ONLY SERVED THE PURPOSE OF LENGTHENING THE PROCEEDINGS AND INCREASING ATTORNEYS FEES AND OTHERWISE TO DEFEAT THE PUBLIC INTERESTS. THE DENIAL OF COMMUNICATION BY ANY MANNER WHATSOEVER IS A VIOLATION OF PLAINTIFF'S RIGHT OF FREE SPEECH AS SECURED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

FOURTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND MEUAX AND AS A FOURTEENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF BROWN AND MEUAX AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER IN THE PRECEEDING CLAIMS IS MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL THE JUDGMENTS OF BROWN ARE ABSOLUTELY VOID ON THE GROUNDS SET OUT ABOVE IN THE PRECEEDING CLAIMS, IT IS HERE ASSERTED THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASON THAT BROWN ACTED TO DENY APPEAL BY PLAINTIFF IN CAUSE 30,035 TO THE TEXAS COURT OF CIVIL APPEALS BY HOLDING THAT PLAINTIFF HAD SUFFICIENT FUNDS WITH WHICH TO APPEAL WHERE THERE WAS IN THE FILE AN UNCONTESTED AFFIDAVIT IN FORMA PAUPERIS, AND WHERE THE JURY IN THE "TRIAL ON THE MERITS" IN CAUSE 30,035 FOUND THAT PLAINTIFF HAD "ZERO" CASH ASSETS AND WHERE THE TESTIMONY OF PLAINTIFF AT THE HEARING BY BROWN WAS UNCONTRADICTED THAT PLAINTIFF DID NOT HAVE

FUNDS WITH WHICH TO APPEAL. THE FOREGOING WAS DONE BY BROWN IN COOPERATION WITH MEUAX WHO FAILED AND REFUSED TO PREPARE THE STATEMENT OF FACTS OF THE PROCEEDINGS, FOR APPEAL AND WHERE BROWN FAILED AND REFUSED TO PREPARE FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO THE JUDGMENT IN CAUSE 30,035 AND WHERE IN THE NATURE OF CHILDRENS GAMES AT THE HEARING BROWN, MEUAX AND FOSTER LAUGHED AT AND TOYED WITH PLAINTIFF IN A MANNER NOT IN KEEPING WITH THE DIGNITY OF A PROPER COURT OF JUSTICE, AND WHERE PLAINTIFF WAS NOT ALLOWED THE IMPARTIAL HEARING AS IS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND BY THE CONSTITUTION OF THE STATE OF TEXAS.

3. PARAGRAPH 7. OF THE PRECEEDING FIRST COUNT IS MADE A PART HEREOF.

FIFTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A FIFTEENTH CLAIM FOR DECLARATORY

AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE AND JURISDICTION STATEMENTS ALONG WITH THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL OF THE JUDGMENTS BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID IN THAT BROWN KNOWINGLY AND MALICIOUSLY, CONTRARY TO THE FINDINGS OF THE JURY, BASED THE JUDGMENTS ON PERJURED TESTIMONY OPENLY ADMITTED IN OPEN COURT BY MARY WELLS, AND UPON KNOWN FALSE AND MISLEADING FINANCIAL STATEMENTS FURNISHED BY MARY WELLS AND WHERE THE JURY IN CAUSE 30,035 FOUND THAT MARY WELLS HAD MISAPPROPRIATED CASH OF THE COMMUNITY ESTATE IN THE AMOUNT SUPPORTED BY THE EVIDENCE AS ASSERTED BY PLAINTIFF OF $31,000.00, AND WHERE THE JURY FOUND THAT MARY WELLS HAD MADE A FRAUDULENT CONVEYANCE OF THE COMMUNITY AUTOMOBILE BY GIFT TO HER SON

OF THE VALUE OF$3,200.00.

3. PARAGRAPH 7. OF THE ABOVE FIRST COUNT IS MADE A PART HEREOF.

SIXTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A SIXTEENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENTS ENTERED BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS AFORESAID IN THE PRECEEDING CLAIMS FOR RELIEF, IT IS HERE ASSERTED THAT ALL JUDGMENTS ENTERED BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID AS INSTRUMENTS OF CRUEL AND UNUSUAL PUNISHMENT AND EXCESSIVE FINES AS IN THE NATURE OF CRIMINAL PROCEEDINGS,

DIFFERING ONLY IN NAME BY BEING CALLED 'CIVIL' PROCEEDINGS, TO THE INJURY OF PLAINTIFF IN VIOLATION OF THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

SEVENTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS A SEVENTEENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT THE JUDGMENTS ENTERED BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS SET OUT IN THE PRECEEDING CLAIMS FOR RELIEF IT IS HERE ASSERTED THAT THE JUDGMENT AND DECREE OF DIVORCE AS SIGNED BY BROWN ON

JANUARY 11, 1978 IS VOID IN THAT THE TRIAL ON THE MERITS OF THE 6TH DAY OF SEPTEMBER 1977 WAS BASED UPON THE TRIAL PROCEDURE OF ALLOWING A FIRST AND LAST SUMMATION ADDRESS TO THE JURY BY THE ATTORNEY FOR MARY WELLS WHEN ONLY ONE SUMMATION ADDRESS TO THE JURY WAS ALLOWED BY BROWN FOR PLAINTIFF. THE FOREGOING WAS NOT IN KEEPING WITH THE "NO FAULT DIVORCE" PROCEEDINGS NOW STATUTORIALY PROVIDED FOR IN THE STATE OF TEXAS. THE FOREGOING IS ASSERTED AS A VIOLATION OF THE PROVISIONS FOR EQUALITY UNDER THE LAW AS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. THE TRIAL PROCEDURE UTILIZED BY BROWN WAS IN THE NATURE OF "ADVERSARY" PROCEEDINGS NOW ABANDONED BY STATUTE IN THE STATE OF TEXAS. THE ADHERENCE TO THE FORMER ADVERSARY TRIAL PROCEDURE TO THE INJURY OF PLAINTIFF BY BROWN WAS INEQUALITY UNDER THE LAW AS APPLIED TO OTHERS IN THE STATE OF TEXAS WHERE

THE CURRENT NON-ADVERSARY PROCEDURES ARE UTILIZED.

3. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

EIGHTEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN AND AS AN EIGHTEENTH CLAIM FOR DECLARATORY AND EQUITABLE RELIEF ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF BROWN AFORESAID ALONG WITH THE JURISDICTIONAL MATTER AND MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF ARE MADE A PART HEREOF.

2. WITHOUT WAIVER OF THE FACT THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASONS STATED IN THE FOREGOING CLAIMS FOR RELIEF, IT IS ASSERTED THAT ALL JUDGMENTS BY BROWN IN CAUSE 30,035 ARE ABSOLUTELY VOID FOR THE REASON THAT BROWN IN THE PROCEEDINGS IN CAUSE 30,035, TO THE INJURY OF PLAINTIFF AND WITH

PARTIALITY TOWARD MARY WELLS, DID:

A. QUASH THE WITNESS SUBPOENAS OF PLAINTIFF WHEREBY PLAINTIFF WAS NOT ALLOWED ANY WITNESSES AT THE "TRIAL ON THE MERITS" OF SEPTEMBER 6, 1977 WHEREAS MARY WELLS WAS ALLOWED WITNESSES AT SAID TRIAL;

B. REFUSE TO ALLOW THE TAKING BY PLAINTIFF OF THE DEPOSITION OF MARY WELLS PRIOR TO THE "TRIAL ON THE MERITS" WITHOUT THE PRIOR DEPOSITING WITH THE COURT OF AN AMOUNT OF $750.00 IN CASH TO GUARANTEE PAYMENT TO ANY THEN UNKNOWN COURT REPORTER WHO MAY TAKE THE DEPOSITION OF MARY WELLS, BECAUSE PLAINTIFF WAS A BANKRUPT. FURTHERMORE, BROWN REFUSED TO ALLOW THE TAKING OF THE SUBJECT DEPOSITION EVEN UNDER THE CIRCUMSTANCES WHERE PLAINTIFF'S ATTORNEY OFFERED TO GUARANTEE THE REPORTER'S FEE;

C. GRANT ALL OR SUBSTANTIALLY ALL OF THE MOTIONS OF MARY WELLS WHILE AT THE SAME TIME GRANTING NONE OR SUBSTANTIALLY

NONE OF PLAINTIFF'S MOTIONS DURING THE ENTIRE FOUR YEAR PERIOD OF THE PROCEEDINGS IN CAUSE 30,035;

D. QUASH THE SUBPOENA DUCES TEKEM OF PLAINTIFF WHEREBY PLAINTIFF WAS NOT ALLOWED TO VIEW ANY OF THE MATERIAL EVIDENCE IN CONTROL OF MARY WELLS PRIOR TO THE TRIAL ON THE MERITS OF THE 6TH DAY OF SEPTEMBER 1977;

E. ADMIT EVIDENCE OFFERED BY MARY WELLS BUT AT THE SAME TIME REFUSING TO ADMIT EVIDENCE OFFERED BY PLAINTIFF ON THE SAME MATTER AS THAT OFFERED BY MARY WELLS;

F. ORDER THE PRIVATE SALE OF PLAINTIFF'S HOMESTEAD WITHOUT TRIAL, BY TEMPORARY ORDER OF FEBRUARY 26, 1976, AND SURRENDER OF THE HOMESTEAD WITHIN 10 DAYS;

G. ORDER THE PRIVATE SALE OF PLAINTIFF'S HOMESTEAD WITHOUT PLEADINGS THEREFOR OR NECESSITY THEREFOR BEING SHOWN AT THE TRIAL ON THE MERITS OF THE 6TH

DAY OF SEPTEMBER 1977, BY JUDGMENT AND DECREE OF DIVROCE SIGNED ON JANUARY 11, 1978;

H. FAIL AND REFUSE TO ADMIT EVIDENCE OF A PAROL PARTITION AGREEMENT AFTER SEPARATION OF THE PARTIES, AS IS VALID IN TEXAS, OF THE PROPERTY OF THE PARTIES IN CAUSE 30,035;

I. INCLUDE PROVISIONS IN THE JUDGMENT AND DECREE OF DIVORCE OF JANUARY 11, 1978 WHERE THE JURY FOUND NO EVIDENCE ;

J. FAIL AND REFUSE TO SUBMIT TO THE JURY SPECIAL ISSUES AS SUBMITTED BY PLAINTIFF, ESPECIALLY AS SUCH ISSUES RELATE TO THE BANKRUPTCY OF PLAINTIFF;

K. VIOLATE BROWN'S OWN INSTRUCTIONS TO THE JURY AS TO COMMUNITY PROPERTY IN THE ENTERING OF THE JUDGMENT AND DECREE OF DIVORCE OF JANUARY 11, 1978;

L. ADJUDGE ALL COSTS EXPENDED IN CAUSE 30,035 TO PLAINTIFF WHERE THE JURY

FOUND PLAINTIFF HAD ZERO CASH ASSETS.

3. THE FOREGOING IS ASSERTED AS A VIOLATION BY BROWN OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES WHEREBY EQUALITY UNDER THE LAW IS SECURED, AND WHICH DENIAL WAS TO THE INJURY OF PLAINTIFF.

4. PARAGRAPH 7. OF THE FIRST COUNT IS MADE A PART HEREOF.

NINETEENTH COUNT

PLAINTIFF COMPLAINS AGAINST BROWN FOSTER, MARY WELLS, SLECZYK, MEUAX, MCDOWELL, BETTY MCDOWELL AND LINCOLN AND AS A NINETEENTH CLAIM OF DEPRIVATION OF CIVIL RIGHTS AND FOR DAMAGES AS TO THE DEFENDANTS IN CONSPIRACY WITH ONE ANOTHER, OR ALTERNATIVELY AS INDIVIDUALS, ALLEGES:

1. THE RESIDENCE STATEMENTS OF PLAINTIFF AND OF THE DEFENDANTS SET OUT ABOVE ALONG WITH THE MATTER CONTAINED IN THE PRECEEDING CLAIMS FOR RELIEF AND THE

ABOVE JURISDICTIONAL MATTER IS MADE A PART HEREOF.

2. IT IS ASSERTED THAT A CONTINUING CONSPIRACY EXISTED AGAINST PLAINTIFF DURING THE PERIOD OF ON OR ABOUT JANUARY 30, 1976 AND CONTINUING TO ON OR ABOUT JANUARY 4, 1980 AND THEREAFTER, WHERE THE DEFENDANTS DID CONSPIRE TO AND DID IMPEDE, HINDER, OBSTRUCT AND DEFEAT THE DUE COURSE OF JUSTICE IN THE STATE OF TEXAS, UNDER THE COLOR OF LAW, TO DENY TO PLAINTIFF EQUAL PROTECTION AND DUE PROCESS UNDER THE LAW AS IS SECURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; TO DENY FREEDOM OF SPEECH AND RELIGIOUS FREEDOM AND RIGHT OF PRIVACY AND RIGHT OF FREE ASSOCIATION AND RIGHT TO PETITION FOR REDRESS OF GRIEVANCES, AS SECURED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND THE DOCTRINE OF SEPARATION OF

CHURCH AND STATE THEREUNDER; TO DENY THE RIGHT TO BE SECURE IN PLAINTIFF'S PERSON, HOUSE, PAPERS AND EFFECTS AS SECURED BY THE FOURTH AMENDMENT TO THE CONSITUTION OF THE UNITED STATES; TO DENY THE RIGHT OF TRIAL BY AN IMPARTIAL JURY AS SECURED TO PLAINTIFF BY THE SEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND TO DENY TO PLAINTIFF THE PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT AND EXCESSIVE FINES AS SECURED BY THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, AND ALL OF WHICH IS SECURED TO PLAINTIFF ADDITIONALLY BY THE CONSTITUTION OF THE STATE OF TEXAS.

3. EACH DEFENDANT IS CHARGED WITH ACTIVE AND VICARIOUS PARTICIPATION IN THE CONSPIRACY SET OUT ABOVE, WITH BAD FAITH AND WITH THE PURPOSE OF HARRASSING PLAINTIFF WITH THE PURPOSE AND INTENT TO ACT WITH MALICIOUS DISREGARD FOR THE RIGHTS OF

PLAINTIFF.

4. IT IS SHOWN THAT BROWN ACTED AS DID WHITWORTH OUTSIDE HIS JURISDICTION AND AUTHORITY, UNDER COLOR OF LAW, TO PERFORM ACTS IN CONSPIRACY, AND INDIVIDUALLY NOT NORMALLY PERFORMED BY A JUDGE OR RECEIVER AND ARE THEREFORE NOT PROTECTED BY THE DOCTRINE OF JUDICIAL IMMUNITY. IT IS SHOWN THAT THE REMAINING DEFENDANTS ACTED IN CONSPIRACY WITH BROWN AND WHITWORTH WHO ACTED UNDER COLOR OF LAW.

5. IT IS ASSERTED THAT THE DEFENDANTS DO NOW HOLD AND DO CONTINUE TO HOLD PERSONAL AND REAL PROPERTY RIGHTFULLY BELONGING TO PLAINTIFF AND WHICH PERSONAL AND REAL PROPERTY WAS WRONGFULLY TAKEN FROM PLAINTIFF UNDER COLOR OF LAW. THE AFORESAID PROPERTY INCLUDES BUT IS NOT LIMITED TO THE RESIDENCE KNOWN AS 9 TIFFANY LANE, SUGAR LAND, FORT BEND COUNTY, TEXAS; THE RESIDENCE KNOWN AS 1354 CHARDONNAY, HOUSTON, HARRIS

COUNTY, TEXAS; BANK ACCOUNTS AND SAFETY DEPOSIT BOXES IN THE FIRST STATE OF BELLAIRE, BELLAIRE, TEXAS; BUSINESS ASSETS LOCATED AT 6430 HILLCROFT, HOUSTON, TEXAS AND OTHER PERSONAL AND REAL PROPERTY AND FINANCIAL ACCOUNTS YET TO BE DISCOVERED BY PLAINTIFF ALL OF WHICH HAVE BEEN TAKEN AND OR CONCEALED FROM PLAINTIFF THROUGH THE CONSPIRATORIAL ACTS OF THE DEFENDANTS.

6. IT IS ASSERTED THAT THE DEFENDANTS HAVE ACTED TO PLACE PLAINTIFF IN A BANKRUPT AND DESTITUTE CONDITION AND HAVE HARMED AND INJURED THE GOOD CREDIT AND BUSINESS STANDING OF PLAINTIFF AND HAVE TAKEN UNTO THEMSELVES IN THE FORM OF ATTORNEY'S FEES, RECEIVER'S FEES, LOAN DISCOUNTS AND OTHERWISE, FUNDS RIGHTFULLY BELONGING TO PLAINTIFF.

7. THE OVERT ACTS OF EACH OF THE DEFENDANTS IN THE CONSPIRACY HERE CHARGED INSOFAR AS THE DEFENDANTS CONSPIRATORIAL

ACTS HAVE YET BEEN DISCOVERED WERE:

A. THAT BROWN IN FURTHERANCE OF THE CONSPIRACY DID ACT UNDER COLOR OF LAW USING HIS POSITION AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS TO KNOWINGLY, IN BAD FAITH, DENY TO PLAINTIFF THE RIGHTS AND PROPERTY AS SET OUT ABOVE;

B. THAT MARY WELLS AND FOSTER DID ACT IN CONSPIRACY WITH BROWN TO KNOWINGLY PROVIDE THE VEHICLE BY PETITION IN CAUSE 30,035 AND OTHERWISE ACT AND COOPERATE WITH BROWN WHEREBY PLAINTIFF WOULD BE DEPRIVED OF HIS HOMESTEAD, PERSONAL PROPERTY, CREDIT, GOOD WILL, BUSINESS REPUTATION AND OTHER ASSETS AND BE LEFT BANKRUPT AND DESTITUTE TO PLAINTIFF'S INJURY, AND TO THE INJURY OF THE COMMUNITY CREDITORS WHO WENT UNPAID AND TO THE PROFIT OF BROWN, MARY WELLS, FOSTER AND THE OTHER DEFENDANTS HEREIN;

C. THAT WHITWORTH IN THE POSITION OF RECEIVER IN CAUSE 30,035 DID ACT UNDER

COLOR OF LAW, TO PHYSICALLY TAKE PLAINTIFF'S HOMESTEAD AND PERSONAL PROPERTY WITHOUT DUE PROCESS AND THAT WHITWORTH DID OTHERWISE ACT, UNDER COLOR OF LAW, TO WRONGFULLY TAKE OR CONVERT TO THE BENEFIT OF THE DEFENDANTS, TO THE INJURY OF PLAINTIFF, FUNDS BELONGING TO PLAINTIFF, AND THAT WHITWORTH DID MAKE JUDICIAL DETERMINATIONS TO DEPRIVE PLAINTIFF OF PROPERTY AND MONEY BELONGING TO PLAINTIFF, AND ALL OF WHICH ACTS WHITWORTH KNEW WERE OUTSIDE HIS JURISDICTION AND AUTHORITY AS RECEIVER;

D. THAT MEUAX ACTING AS COURT REPORTER, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS DID ACT WITH BROWN, FOSTER AND MARY WELLS TO DENY THE STATEMENT OF FACTS OF THE PROCEEDINGS IN CAUSE 30,035, AND DID ACT OTHERWISE TO CAUSE PLAINTIFF TO BE RIDICULED AND HARRASSED, AND THAT MEUAX HOLDS HIS POSITION OF COURT REPORTER AT THE PLEASURE OF BROWN AND THAT

HIS CONTINUED EMPLOYMENT IS THE SAID POSITION OF COURT REPORTER WAS ONE OF THE CONSIDERATIONS RECEIVED BY MEUAX IN PERPETRATION AND FURTHERANCE OF THE CONSPIRACY SET OUT ABOVE.

E. THAT WLECZYK ACTING AS CLERK, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS BUT OUTSIDE HER PROPER AUTHORITY AND JURISDICTION DID ACT ON OR ABOUT JANUARY 4, 1980 TO GET PLAINTIFF TO WAIVE PLAINTIFF'S RIGHTS AS TO RECEIPT OF ALL OF THE PROCEEDS DUE PLAINTIFF FROM THE SALE OF PLAINTIFF'S HOMESTEAD.

F. THAT MCDOWELL AND BETTY MCDOWELL DID KNOWINGLY TAKE FROM PLAINTIFF THROUGH THE KNOWING MISCONDUCT OF WHITWORTH $2,000.00 AS A LOAN FEE OR LOAN DISCOUNT ON A LOAN SECURED BY MCDOWELL AND BETTY MCDOWELL WITH WHICH TO PURCHASE PLAINTIFF'S HOMESTEAD FROM WHITWORTH WHERE ALL COSTS OF THE SUBJECT LOAN GOTTEN BY THE MCDOWELL'S WERE THE

OBLIGATION OF THE MCDOWELLS. MCDOWELL AND BETTY MCDOWELL ACTED FURTHER, WRONGFULLY, TO DEMAND AND RECEIVE THOUSANDS OF DOLLARS RIGHTFULLY BELONGING TO PLAINTIFF IN THE IMPROVEMENT OF THE RESIDENCE KNOWN AS 9 TIFFANY LANE, SUGAR LAND, FORT BEND COUNTY, TEXAS AND IN RECEIVING SAID PROPERTY AT A DISTRESSED PRICE WHEN IN FACT SAID RESIDENCE WAS PLACED IN FIRST CLASS CONDITION AT THE EXPENSE OF AND TO THE INJURY OF PLAINTIFF.

G. THAT LINCOLN DID KNOWINGLY DEMAND AND RECEIVE FROM WHITWORTH FUNDS BELONGING TO PLAINTIFF ON ACCOUNT OF DEBTS AND OBLIGATIONS ALREADY DISCHARGED IN BANKRUPTCY IN CONTEMPT OF A PROPER INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION IN BANKRUPTCY NO. 76-HP-353. IT IS SHOWN THAT LINCOLN RECEIVED FROM WHITWORTH THE AFORESAID FUNDS BELONGING TO PLAINTIFF IN THE FORM OF MORTGAGE PAYMENTS, ACCELERATED

INTEREST, ATTORNEYS FEES, AND OTHER CHARGES NOT PROPERLY ENFORCEABLE AGAINST PLAINTIFF IT IS FURTHER SHOWN THAT LINCOLN RECEIVED THE AFORESAID FUNDS BELONGING TO PLAINTIFF FROM WHITWORTH AS A RESULT OF JUDICIAL DETERMINATIONS WRONGFULLY MADE BY WHITWORTH AND WHICH WRONGFUL ACTS OF WHITWORTH WERE WITHIN THE KNOWLEDGE OF LINCOLN AND WHICH WRONGFUL ACTS WERE ENCOURAGED TO WHITWORTH AND SUGGESTED TO BROWN AND WHITWORTH BY LETTER BY LINCOLN DATED NOVEMBER 15, 1978 AND AT OTHER TIMES.

8. IT IS ASSERTED THAT THE DEFENDANTS ACTED OTHERWISE WITH CLANDESTINE CONDUCT AND MANNER TO CONSPIRE AND ACT TO THE INJURY OF PLAINTIFF.

9. IT IS ASSERTED THAT THE CLASS BASED INVIDIOUSLY DISCRIMINATORY ANIMUS BEHIND THE ACTIONS OF THE DEFENDANT CONSPIRATORS WAS THAT PLAINTIFF'S ATTORNEY, AND BY ASSOCIATION AND VICARIOUSLY THEREFORE

PLAINTIFF, WAS OF THE JEWISH RELIGION AND ADDITIONALLY WERE OF THAT CLASS OF "OUT OF TOWNERS" OR FROM THE "BIG CITY" AS OPPOSED TO THE "COUNTRY COURTHOUSE" OR "COUNTRY TOWN" OR "GOOD OLD BOY" NON-JEWISH CLASS OR CLIQUE IN CONTROL OF STATE LAW ADMINISTRATION IN CAUSE 30,035. THE CLASS BASED INVIDIOUS MOTIVATIONS OF THE CONSPIRATOR DEFENDANTS AFORESAID WAS ADDITIONAL TO THE MOTIVATION OF PROFIT AND GAIN AND TO GETTING EVEN THROUGH PLAINTIFF WITH THAT CLASS OF LITIGANTS OR--PERSONS "WHO MAKE WAIVES AND ARE ALWAYS DEMANDING THEIR CIVIL RIGHTS". IT IS FURTHER SHOWN THAT BROWN, ET AL, ACTED IN THE GENDER BASED DISCRIMINATION IN CAUSE 30,035 TO "PROTECT" THE "HELPLESS FEMALE" WIFE CLASS FROM THE "CRUEL AND EVIL MALE" HUSBAND CLASS OF PERSONS OR LITIGANTS AND WHICH CLASS OF "CRUEL AND EVIL MALE" HUSBAND CLASS OF PERSONS OR LITIGANTS INCLUDED PLAINTIFF AND WHICH

CLASSES AFORESAID ARE MUCH DESPISED BY THOSE IN CONTROL OF STATE LAW ADMINISTRATION IN CAUSE 30,035.

PRAYER

WHEREFORE, PLAINTIFF DEMANDS:

1. AS TO THE FIRST THROUGH EIGHTEENTH COUNTS THAT:

A. ALL JUDGMENTS OF BROWN IN CAUSE 30,035, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS BE DECLARED UNCONSTITUTIONAL AND NULL AND VOID AND THAT IT BE DECLARED THAT BROWN WAS DISQUALIFIED TO ACT IN CAUSE 30,035 AS JUDGE, AND THAT THE JUDICIAL ACTS AND OTHER ACTS OF WHITWORTH AS RECEIVER IN CAUSE 30,035 BE DECLARED UNCONSTITUTIONAL AND NULL AND VOID, AND THAT THE ACTS OF LINCOLN AND THE OTHER DEFENDANTS WERE WRONGFUL AND UNCONSTITUTIONAL AND THAT LINCOLN ADDITIONALLY ACTED IN CONTEMPT OF A PROPER INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION;

B. THE RELIGIONS TEST OF JURORS AS SET OUT IN COUNT 3, AND THE RELATED PREJUDICE OF THE JURY IN CAUSE 30,035 WAS UNCONSTITUTIONAL; THAT SECTION 3.59 OF THE TEXAS FAMILY CODE, AS IT WAS APPLIED TO PLAINTIFF, WAS UNCONSTITUTIONAL AS GENDER BASED SEX DISCRIMINATION; THAT THE "ADVERSARY" TRIAL PROCEDURE OF ALLOWING THE ATTORNEY FOR MARY WELLS TO MAKE TWO SUMMATION, FIRST AND LAST, ADDRESSES TO THE JURY AS OPPOSED TO ONE SUCH ADDRESS AS ALLOWED PLAINTIFF WAS UNCONSTITUTIONAL;

C. OWNERSHIP, POSSESSION AND CONTROL OF PLAINTIFF'S HOMESTEAD, KNOWN AS 9 TIFFANY LANE, SUGAR LAND, FORT BEND COUNTY, TEXAS, BE RESTORED TO PLAINTIFF; THAT A ONE HALF OWNERSHIP INTEREST IN THAT RESIDENCE KNOWN AS 1354 CHARDONNAY, HOUSTON, HARRIS COUNTY, TEXAS BE GRANTED TO

PLAINTIFF, AS WELL AS A ONE HALF OWNERSHIP INTEREST IN THOSE BANK ACCOUNTS AND SAFETY DEPOSIT BOX ACCOUNTS AT FIRST STATE BANK OF BELLAIRE, BELLAIRE, TEXAS, AND ALL BUSINESS ASSETS AND PROPERTY LOCATED AT 6430 HILLCROFT, HOUSTON, TEXAS AND ALL OTHER REAL AND PERSONAL PROPERTY WHICH THE COURT FINDS TO HAVE BEEN WRONGFULLY CONCEALED, WITHHELD OR TAKEN FROM PLAINTIFF BY THE UNCONSTITUTIONAL OR OTHERWISE WRONGFUL ACTS OF THE DEFENDANTS.

D. THE COURT FIND THAT PLAINTIFF WAS WRONGFULLY FORCED INTO PERSONAL BANKRUPTCY; THAT THE DEFENDANTS BE REQUIRED TO MAKE FULL RESTITUTION TO THE COMMUNITY CREDITORS; THAT THE COURT ORDER ALL REFERENCE TO THE BANKRUPTCY OF PLAINTIFF BE STRICKEN FROM PLAINTIFF'S CREDIT RECORD AT APPROPRIATE CREDIT REPORTING AGENCIES;

E. PLAINTIFF BE GRANTED DAMAGES PURSUANT TO AUTHORITY OF 28 USC 2201 AND

28 USC 2202 AS TO:

(A) COUNT 6. IN THE AMOUNT OF $20,000.00
(B) COUNT 8. IN THE AMOUNT OF $200,000.00
(C) COUNT 9. IN THE AMOUNT OF $200,000.00
(D) COUNT 10. IN THE AMOUNT OF $150,000.00
(E) COUNT 12. IN THE AMOUNT OF $200,000.00
(F) COUNT 15. IN THE AMOUNT OF $34,000.00

F. PLAINTIFF BE GRANTED SUCH OTHER AND FURTHER RELIEF, INCLUDING PUNITIVE DAMAGES, AS IS JUST.

2. AS TO THE NINETEENTH COUNT, PLAINTIFF DEMANDS THAT ALL JUDGMENTS OF BROWN IN CAUSE 30,035 AFORESAID, BE DECLARED UNCONSTITUTIONAL AND NULL AND VOIC AND THAT THE JUDICIAL ACTS AND OTHER ACTS OF WHITWORTH BE DECLARED UNCONSTITUTIONAL AND NULL AND VOID; THAT PLAINTIFF BE GRANTED JUDGMENT AGAINST THE DEFENDANTS, JOINTLY AND SEVERALLY, IN THE AMOUNT OF $804,200.00 AND THAT OWNERSHIP, POSSESSION AND CONTROL OF PLAINTIFF'S HOMESTEAD KNOWN AS

9 TIFFANY LANE, SUGAR LAND, FORT BEND COUNTY, TEXAS, BE RESTORED TO PLAINTIFF; THAT A ONE HALF OWNERSHIP INTEREST IN THAT RESIDENCE KNOWN AS 1354 CHARDONNAY, HOUSTON, HARRIS COUNTY, TEXAS BE GRANTED TO PLAINTIFF AS WELL AS A ONE HALF OWNERSHIP INTEREST IN THOSE BANK ACCOUNTS AND SAFETY DEPOSIT BOX ACCOUNTS IN THE NAME OF MARY WELLS OR MARY A. WELLS OR WESTPARK SECRETARIAT, HOUSTON, TEXAS OR OTHERWISE IN THE FIRST STATE BANK OF BELLAIRE, BELLAIRE, TEXAS; A ONE HALF OWNERSHIP INTEREST IN ALL BUSINESS PROPERTY AND ASSETS LOCATED AT 6430 HILLCROFT, HOUSTON, TEXAS; A ONE HALF OWNERSHIP INTEREST IN ALL OTHER REAL AND PERSONAL PROPERTY WHICH THE COURT FINDS TO HAVE BEEN WRONGFULLY CONCEALED, WITHHELD OR TAKEN FROM PLAINTIFF BY THE UNCONSTITUTIONAL OR OTHERWISE WRONGFUL ACTS OF THE DEFENDANTS; THAT THE COURT FIND THAT PLAINTIFF WAS WRONGFULLY FORCED

INTO BANKRUPTCY; THAT THE DEFENDANTS BE REQUIRED TO MAKE RESTITUTION TO ALL THE COMMUNITY CREDITORS; THAT ALL REFERENCE TO THE BANKRUPTCY BE STRICKEN FROM THE CREDIT RECORD AT ALL APPROPRIATE CREDIT REPORTING AGENCIES; PLAINTIFF BE GRANTED SUCH OTHER AND FURTHER RELIEF, INCLUDING PUNITIVE DAMAGES, AS IS JUST.

RESPECTFULLY SUBMITTED,

(SIGNED)WARREN G. WELLS, SR.
WARREN G. WELLS, SR., PRO SE
PO BOX 36552, HOUSTON, TEXAS 77036
TELEPHONE 713-227-0149 (THIS IS NOT MY TELEPHONE--PLEASE LEAVE MESSAGE)

JURY DEMAND

PLAINTIFF DEMANDS A JURY TRIAL ON ALL MATTERS AS OF RIGHT TRIABLE BY JURY.

(SIGNED)WARREN G. WELLS, SR.
WARREN G. WELLS, SR., PRO SE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION (FILED
OCT 27,1980)

WARREN G. WELLS, SR., PLAINTIFF	:
VS.	:CIVIL ACTION
SIDNEY J. BROWN, INDIVIDUALLY AND AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS; LOGENE FOSTER; MARY WELLS; IRENE WLECZYK; E.J. MEAUX; JAMES S. WHITWORTH; C. D. MCDOWELL; BETTY M. MCDOWELL AND LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON, DEFENDANTS	:NO. H-80-1964

ORIGINAL ANSWER BY
DEFENDANT, MARY WELLS,
SUBJECT TO HER MOTION TO DISMISS FOR FAILURE OF PLAINTIFF'S SUIT TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW DEFENDANT, MARY WELLS, AND SUBJECT TO HERE PRIOR MOTION UNDER CIVIL RULE 12(B) (6) TO DISMISS THIS CAUSE AS TO HER FOR FAILURE OF THE COMPLAINT TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED TO HIM, AND WITHOUT WAIVING SAID MOTION UNDER CIVIL RULE 12(B) (6). FILES

THIS HER ORIGINAL ANSWER TO PLAINTIFF'S COMPLAINT AND FOR HER ANSWER TO THE COMPLAINT OF PLAINTIFF ALLEGES AND STATES AS FOLLOWS:

. . . . . .

VII.

AS TO THE ALLEGATIONS SET OUT IN THE FIFTH COUNT, THE DEFENDANT WOULD ANSWER AS FOLLOWS:

THE STATEMENTS CONTAINED IN THE FIFTH COUNT OF THE COMPLAINT DO NOT REQUIRE RESPONSIVE PLEADINGS BY THIS DEFENDANT AND ARE NEITHER ADMITTED NOR DENIED.

. . . . . .

XXI.

4. THE ALLEGATIONS CONTAINED IN PARAGRAPH 4 DO NOT REQUIRE RESPONSIVE PLEADINGS BY THIS DEFENDANT AND ARE NEITHER ADMITTED NOR DENIED.

. . . . . .

RESPECTFULLY SUBMITTED,

(SIGNED) MARY A. WELLS

MARY A. WELLS, PRO SE
6430 HILLCROFT, SUITE 112
HOUSTON, TEXAS 77081
771-4345

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(FILED
OCT 27,1980)

WARREN G. WELLS, SR., PLAINTIFF,	:
V.	:CIVIL ACTION NO.
SIDNEY J. BROWN, INDIVIDUALLY AND AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS; LOGENE FOSTER; MARY WELLS; IRENE WLECZYK; E.J. MEUAX; JAMES S. WHITWORTH; C.D. MCDOWELL; BETTY MCDOWELL AND LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE WASHINGTON, DEFENDANTS.	:H-80-1964

FINAL JUDGMENT

FOR THE REASONS SET FORTH IN THE COURT'S ORDER ENTERED THIS DATE. THE ABOVE STYLED CAUSE IS HEREBY DISMISSED.

THIS IS A FINAL JUDGMENT.

THE CLERK SHALL SEND A COPY OF THIS FINAL JUDGMENT TO COUNSEL FOR THE PARTIES.

DONE AT HOUSTON, TEXAS, THIS 27TH DAY OF OCTOBER 1980.

(SIGNED) GABRIELLE K. MCDONALD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

	(FILED OCT 27,1980)
WARREN G. WELLS, SR., PLAINTIFF,	:
V.	:CIVIL
	:ACTION NO.
SIDNEY J. BROWN, INDIVIDUALLY AND AS JUDGE, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS; LOGENE FOSTER; MARY WELLS; IRENE WLECZYK; E.J. MEUAX; JAMES S. WHITWORTH; C.D. MCDOWELL; BETTY MCDOWELL AND LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE WASHINGTON, DEFENDANTS.	:H-80-1964

ORDER

THIS IS A SUIT CHALLENGING THE VALIDITY OF CERTAIN ACTIONS TAKEN AND THE JUDGMENT RENDERED IN CONNECTION WITH THE STATE COURT CASE, IN THE MATTER OF THE MARRIAGE OF MARY A. WELLS AND WARREN G. WELLS, CAUSE NO. 30,035, 328TH FAMILY DISTRICT COURT, FORT BEND COUNTY, TEXAS. A JUDGMENT AND DECREE OF DIVORCE WAS

ENTERED ON JANUARY 11, 1978, WHICH HAD THE EFFECT OF DIVORCING THE PARTIES INVOLVED AND DIVIDING THEIR PROPERTY. THE PLAINTIFF SEEKS DECLARATORY AND INJUNCTIVE RELIEF RELATING TO ALL ORDERS ENTERED IN THAT ACTION, AS WELL AS DAMAGES FOR THE INJURIES HE HAS SUFFERED AS A RESULT OF THE ALLEGEDLY ILLEGAL ACTIONS. HE HAS BROUGHT THIS ACTION PURSUANT TO 42 U.S.C. 1983, 1985(2) AND (3), AND 1988 ALLEGING THAT DEFENDANTS VIOLATED HIS RIGHTS UNDER THE FIRST, FOURTH, SEVENTH, EIGHTH, AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

NAMED AS DEFENDANTS IN THIS ACTION ARE SIDNEY J. BROWN, JUDGE OF THE 328TH FAMILY DISTRICT COURT OF FORT BEND COUNTY, TEXAS, WHO HEARD THIS DIVORCE ACTION; IRENE WLECZYK, DISTRICT CLERK OF FORT BEND COUNTY, TEXAS; E.J. MEUAX, COURT REPORTER FOR THE 328TH FAMILY

DISTRICT COURT; MARY WELLS, PLAINTIFF'S EX-WIFE AND A PARTY TO THE DIVORCE ACTION; LOGENE L. FOSTER, A PRIVATE ATTORNEY WHO REPRESENTED MARY WELLS IN THE DIVORCE ACTION; JAMES S. WHITWORTH, THE COURT APPOINTED RECEIVER APPOINTED BY JUDGE BROWN; AND LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON, THE HOLDER OF THE MORTGAGE ON PLAINTIFF'S HOMESTEAD PROPERTY.

IN RESPONSE TO THE PLAINTIFF'S ALLEGATIONS OF A CONSPIRACY AMONG THE DEFENDANTS TO VIOLATE HIS CIVIL RIGHTS, DEFENDANTS BROWN, FOSTER, WELLS, WLECZYK, WHITWORTH, C.D. MCDOWELL AND BETTY MCDOWELL HAVE EACH FILED MOTIONS TO DISMISS PURSUANT TO RULE 12(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE. THESE MOTIONS ASSERT THAT THIS ACTION SHOULD BE DISMISSED ON THE BASIS OF LACK OF SUBJECT MATTER JURISDICTION, LACK OF IN PERSONAM

JURISDICTION, AND THE FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED. IN ADDITION, SEVERAL OF THE DEFENDANTS ASSERT THAT THEY WERE ACTING IN THEIR OFFICIAL CAPACITY AND ARE THUS IMMUNE FROM ANY LIABILITY PREMISED UPON THEIR OFFICIAL ACTS.

THE PLAINTIFF ASSERTS THAT THE ORDERS AND JUDGMENT ENTERED IN THE STATE COURT ACTION ARE VOID BECAUSE THEY ARE CONTRARY TO THE UNITED STATES CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS. HE STATES THAT HE IS NOT ATTEMPTING TO MERELY VACATE THE STATE COURT JUDGMENT. RATHER, THE PLAINTIFF ARGUES THAT THE STATE JUDGE WAS ACTING OUTSIDE THE SCOPE OF HIS AUTHORITY AND THAT, CONSEQUENTLY, THE JUDGMENT IS VOID AS A MATTER OF LAW, HAVING NO FORCE OR EFFECT, AND MAY BE SET ASIDE AT ANY TIME. THE PLAINTIFF CITES 34 TEX.JUR.2D 260 AND 262 IN SUPPORT OF

HIS ARGUMENT.

THE COURT NEED NOT ADDRESS THE DEFENDANTS' ARGUMENTS REGARDING FAILURE TO STATE A CLAIM, LACK OF PERSONAL JURISDICTION, AND JUDICIAL IMMUNITY FOR IT IS CONVINCED THAT THE COURT LACKS SUBJECT MATTER JURISDICTION TO HEAR THIS SUIT. WHILE CASTING HIS COMPLAINT IN THE FORM OF A CIVIL RIGHTS SUIT, IT IS CLEAR, THAT THE PLAINTIFF IS MERELY SEEKING A REVERSAL OF THE STATE COURT JUDGMENT. THE ACTIONS COMPLAINED OF WERE MANIFESTLY JUDICIAL ACTIONS TAKEN BY A COURT PURSUANT TO ORDER OF THE COURT WHO HAD PLENARY JURISDICTION OVER THIS FAMILY LAW MATTER. SEE SAWYER V. OVERTON, 595 F.2D 253 (5TH CIR. 1979). THE JUDGMENT AND ORDERS OF THE STATE COURT, EVEN IF CLEARLY ERRONEOUS AND BASED UPON MALICIOUS CLAIMS INTENDED TO HARM THE PLAINTIFF AS ALLEGED, MAY NOT BE REVIEWED BY THIS COURT. THE PLAINTIFF'S

ONLY RECOURSE IS BY DIRECT APPEAL TO THE APPELLATE AND SUPREME COURTS OF THE STATE OF TEXAS, AND FINALLY TO THE UNITED STATES SUPREME COURT. ROOKER V. FIDELITY TRUST COMPANY, 263 U. 413 (1923); BUCKLEY TOWERS CONDOMINUM V. BUCHWALD, 595 F.2D 253 (5TH CIR. 1979); AND SAWYER, SUPRA. AS THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT STATED IN BUCKLEY TOWERS SUPRA AT 254:

> WE (FEDERAL COURTS) HAVE NO GENERAL POWER TO SUPERVISE STATE COURT PROCEEDINGS OR TO CORRECT ERRORS OF LAW THAT MAY OCCUR FROM TIME TO TIME IN THEIR COURSE. THOUGH IN FORM A CIVIL RIGHTS SUIT, THIS ACTION IN FACT SEEKS REVIEW AND REVERSAL OF A STATE TRIAL COURT JUDGMENT THAT MAY WELL NOT EVEN BE FINAL. APPELLANTS MAY PRESENT THEIR CONSTITUTIONAL AND OTHER CLAIMS GROUNDED IN FEDERAL LAW TO THE STATE COURTS....IF, IN THE EVENT, THEY ERR, APPELLANTS' REMEDY IS IN THE UNITED STATES SUPREME COURT, NOT HERE.

THE PLAINTIFF HAS MISTAKENLY LABELED THE STATE COURT JUDGMENT VOID AS A MATTER

OF LAW. AS IS STATED IN 34 TEX.JUR.2D 262, AT 177-178, THE ONLY DEFECT THAT WILL MAKE A JUDGMENT VOID IS LACK OF JURISDICTION ON THE PART OF THE COURT RENDERING IT, SUCH LACK BEING APPARENT ON INSPECTION OF THE JUDGMENT OR OF ITS RECORD. (FOOTNOTES OMITTED.) A VOID JUDGMENT IS ONE THAT IS RENDERED IN THE ABSENCE OF ONE OF THE FOLLOWING: A LEGALLY ORGANIZED COURT, JURISDICTION OVER THE SUBJECT MATTER, JURISDICTION OVER THE PERSON, AND POWER TO RENDER THE PARTICULAR RELIEF AWARDED. 34 TEX. JUR.2D 269 AT 196. IT CAN HARDLY BE DISPUTED THAT THE JUDGMENT RENDERED BY THE 328TH FAMILY DISTRICT COURT OF FORT BEND COUNTY, TEXAS, COMPLIED WITH THE JURISDICTIONAL PREREQUISITES. SEE FAMILY DISTRICT COURT ACT, TEX.REV.CIV.STAT.ANN. ART. 1926A (VERNON). AT BEST, IT WAS A "VOIDABLE" DECISION WHICH COULD ONLY BE ATTACKED UPON DIRECT APPEAL. SEE GENERALLY 34 TEX.JUR.2D

264 AND 265.

THIS ACTION IS SIMILAR TO THE ACTION FILED EARLIER IN THIS COURT CHALLENG- THE INITIAL TEMPORARY RESTRAINING ORDER ISSUED BY JUDGE BROWN. WELLS V. HONORABLE SIDNEY J. BROWN, JUDGE COURT OF DOMESTIC RELATIONS FORT BEND COUNTY, TEXAS, ET AL., CIVIL ACTION NO. H-76-913. IN THAT CASE THE PLAINTIFF BROUGHT SUIT AGAINST JUDGE BROWN, MARY A. WELLS, LOGENE FOSTER, AND HIS ASSOCIATE RONALD R. POPE. THIS COURT (PER J.BUE) ADOPTED ON OCTOBER 5, 1976, THE MAGISTRATE'S MEMORANDUM AND RECOMMENDATION THAT THE PLAINTIFF'S CAUSE OF ACTION BE DISMISSED. THE MAGISTRATE HAD CONCLUED THAT THE "ATTEMPTED COLLATERAL ATTACK UPON THE STATE COURT ACTION TAKEN BY PLAINTIFF IN THE INSTANT CASE DOES NOT RISE TO A CONSTITUTIONAL CLAIM," CITING HILL V. MCCLELLAN, 490 F.2D 859 (5TH CIR.1974) AND ATCHLEY V. GREENHILL, 373 F.SUPP. 512 (S.D.

TEX. 1974). THAT ORDER WAS AFFIRMED BY THE FIFTH CIRCUIT ON OCTOBER 18, 1977.

IN LIGHT OF THE ABOVE, THE COURT CONCLUDES THAT THE PLAINTIFF HAS NOT ESTABLISHED THAT HE IS ENTITLED TO BE IN FEDERAL COURT ON THIS MATTER. ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT DEFENDANTS' MOTIONS TO DISMISS ARE GRANTED. ALL OTHER MOTIONS PENDING AS OF THE DATE OF THIS ORDER ARE EFFECTIVELY MOOTED BY THE DISMISSAL OF THIS ACTION AND THE GRANT OF FINAL JUDGMENT ENTERED HEREWITH.

THE CLERK SHALL SEND A COPY OF THIS ORDER TO COUNSEL FOR THE PARTIES.

DONE AT HOUSTON, TEXAS, THIS 27TH DAY OF OCTOBER, 1980.

(SIGNED) GABRIELLE K. MCDONALD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 80-2193
SUMMARY CALENDAR

WARREN G. WELLS, SR.,
PLAINTIFF-APPELLANT,

VERSUS

SIDNEY J. BROWN, ET AL,
DEFENDANTS-APPELLEES.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

(MAY 20, 1981)

BEFORE GEE, RUBIN AND RANDALL, CIRCUIT JUDGES.

RUBIN, CIRCUIT JUDGE:

DISSATISFIED WITH TEXAS STATE COURT PROCEEDINGS THAT LED TO A STATE JUDGMENT DISSOLVING HIS MARRIAGE AND SEPARATING HIS AND HIS SPOUSE'S PROPERTY, WARREN G. WELLS, APPEARING FOR HIMSELF, FILED A COMPLAINT IN FEDERAL COURT, SEEKING EQUITABLE, DECLARATORY, AND MONETARY RELIEF. HE NAMED AS DEFENDANTS HIS FORMER WIFE

(MARY WELLS); THE STATE JUDGE WHO PRESIDED AT THE PROCEEDINGS (SIDNEY J. BROWN); THE STATE COURT CLERK (IRENE WLECZYK); THE COURT REPORTER (EDWARD J. MEAUX); WELLS' FORMER WIFE'S ATTORNEY (LOGENE FOSTER); THE STATE COURT-APPOINTED RECEIVER (JAMES S. WHITMORE); THE PURCHASERS OF THE HOMESTEAD SOLD BY THE RECEIVER PURSUANT TO THE STATE COURT'S ORDER (C.D. AND BETTY MCDOWELL); AND THE HOLDER OF THE MORTGAGE ON THE HOMESTEAD PROPERTY (LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON). JURISDICTION WAS INVOKED ONLY TO CONSIDER FEDERAL QUESTIONS. ALL OF THE PARTIES BUT LINCOLN WERE CITIZENS OF TEXAS.

THE 21-PAGE COMPLAINT ALLEGES THAT ALL OF THE DEFENDANTS CONSPIRED TOGETHER FROM JANUARY 30, 1976, THROUGH JANUARY 4, 1980, TO DENY WELLS HIS CIVIL RIGHTS. MANY OF THE CHARGES ARE LEVELLED AGAINST

JUDGE BROWN, WHO IS ACCUSED OF A NUMBER OF ACTS ALLEGEDLY VIOLATING WELLS' RIGHTS. THE COMPLAINT ALSO ALLEGED THAT THE STATE JUDGMENTS WERE VOID BECAUSE THE PERTINENT STATE LAW DISCRIMINATED ON THE BASIS OF SEX. THE COMPLAINT DESCRIBED ACTIONS OF THE OTHER NAMED DEFENDANTS IN CONNECTION WITH THE STATE PROCEEDINGS AND ORDERS OF JUDGE BROWN. WELLS SOUGHT, IN ADDITION TO OTHER RELIEF, TO HAVE THE STATE JUDGMENT AND INTERLOCUTORY ORDERS IN THE STATE PROCEEDINGS DECLARED NULL AND VOID. HE PRAYED FOR DAMAGES AGAINST THE VARIOUS DEFENDANTS IN THE AMOUNT OF $804,200. THESE WERE SEPARATELY ITEMIZED BY COUNTS, AND ALL BUT ONE SPECIFICATION SOUGHT DAMAGES ONLY FROM JUDGE BROWN.

ALL THE DEFENDANTS BUT MEAUX, THE COURT REPORTER, FILED MOTIONS TO DISMISS, MEAUX FILED AN ANSWER. JUDGE BROWN ALLEGED IN HIS MOTION THAT HE HAD ABSOLUTE JUDICIAL

IMMUNITY. WITHOUT CONSIDERING THE DEFENDDANTS' ARGUMENTS THAT THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILED TO STATE A CLAIM ON WHICH RELIEF COULD BE GRANTED IN A FEDERAL COURT UNDER FED. R. CIV. P.RULE 12(B)(6), THE COURT DISMISSED THE COMPLAINT ON THE BASIS THAT THE COURT LACKED SUBJECT MATTER JURISDICTION, REASONING THAT, ALTHOUGH WELLS CAST HIS COMPLAINT IN THE FORM OF A CIVIL RIGHTS SUIT, HE WAS MERELY SEEKING REVERSAL OF THE STATE COURT JUDGMENT.

WE HAVE CAREFULLY REVIEWED THE COMPLAINT AND CONCLUDE THAT THE DISTRICT COURT LACKED JURISDICTION OVER SEVERAL OF THE CLAIMS AND THAT THE OTHER CLAIMS WERE PROPERLY DISMISSED, ALTHOUGH FOR REASONS DIFFERENT FROM THOSE GIVEN BY THE DISTRICT COURT.

WELLS CONTENDS THAT HIS COMPLAINT STATES A CLAIM UPON WHICH FEDERAL COURTS

CAN GRANT RELIEF. IN REVIEWING THE COMPLAINT, WE MUST CONSIDER ITS ALLEGATIONS AS TRUE. IN ADDITION, BECAUSE THE PLAINTIFF IS NOT A LAWYER, WE EXACT LESS STRINGENT STANDARDS THAN WE WOULD REQUIRE IN PLEADINGS FILED BY LAWYERS. MILLER V. STANMORE, 636 F.2D 986, 988 (5TH CIR. 1981). BY THESE CRITERIA, WE EXAMINE THE VARIOUS CLAIMS SEPARATELY.

WHILE THE COURT MAY LITERALLY HAVE JURISDICTION OF A COMPLAINT ATTACKING A STATE COURT JUDGMENT, IT CANNOT GRANT RELIEF ON SUCH A CLAIM, FOR IT IS WELL-SETTLED THAT FEDERAL COURTS ARE NOT DESIGNED TO SERVE AS ADDITIONAL APPELLATE REVIEWERS OF STATE COURT JUDGMENTS. REYNOLDS V. GEORGIA, 640 F.2D 702, 703 (5TH CIR. 1981). FEDERAL DISTRICT AND CIRCUIT COURTS HAVE NO GENERAL POWER TO SUPERVISE STATE COURT PROCEEDINGS OR TO CORRECT ERRORS OF LAW MADE IN THEM.

BUCKLEY TOWERS CONDOMINIUM, INC. V. BUCHWALD, 595 F.2D 253, 254 (5TH CIR 1979); SEE MONK V. BLACKBURN, 605 F.2D 837, 839 (5TH CIR. 1979), CERT. DENIED, 445 U.S. 933 (1980).

PORTIONS OF THE COMPLAINT, SEPARATE AND DISTINCT FROM THE ALLEGATIONS THAT SEEK REVIEW OF THE STATE JUDGMENT, SEEK MONETARY DAMAGES FROM JUDGE BROWN FOR INJURIES WELLS SUFFERED AS A RESULT OF BROWN'S ACTIONS. HOWEVER, JUDGES ARE COMPLETELY PROTECTED FROM CLAIMS FOR DAMAGES AS A RESULT OF ACTIONS BY THEM IN THEIR JUDICIAL CAPACITY. SEE STUMP V. SPARKMAN, 435 U.S. 349, 98 S.CT. 1099, 55 L.ED.2D 331 (1978). ONLY WHEN A JUDGE ACTS IN THE CLEAR ABSENCE OF ALL JURISDICTION, CAN HE BE HELD LIABLE UNDER THE CIVIL RIGHTS ACTS. CROWE V. LUCAS, 595 F.2D 985, 989 (5TH CIR. 1979) QUOTING STUMP, SUPRA, 435 U.S. AT 356-57, 98 S.CT. AT 1105,

55 L.Ed.2d at_____. While Wells alleges that Judge Brown acted outside his jurisdiction, the misconduct described in the complaint relates only to acts performed by the judge in his capacity as a judge, I.E., judicial acts.

This court, in Harper v. Merckle, 638 F.2d 848, (5th Cir. 1981), reiterated four factors, which, when combined, compel a conclusion that a judicial act was involved:

> (1) the precise act complained of, use of the contempt power, is a normal judicial function; (2) the events involved occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.

Id., at 858, quoting McAlester v. Brown, 469 F.2d 1280, 1282 (5th Cir. 1972). The "absence of jurisdiction" exception refers to situations where a judge acts purely in

A PRIVATE AND NON-JUDICIAL CAPACITY. HENZEL V. GERSTEIN, 608 F.2D 654, 658(5TH CIR. 1979). ASSUMING THAT ALL THE ALLEGATIONS IN THE COMPLAINT ABOUT JUDGE BROWN ARE TRUE, HIS ACTS, EVEN IF IN ERROR, OR DONE MALICIOUSLY OR IN EXCESS OF HIS AUTHORITY, DO NOT SUBJECT HIM TO LIABILITY. STUMP, 435 U.S. AT 356. THE SEVENTH CIRCUIT IN LOPEZ V. VANDERWATER, 620 F.2D 1229, 1234 & N.9 (7TH CIR.), CERT. DISMISSED, _____U.S._____,101 S.CT. 601, _____L.ED.2D_____(1980), RECENTLY POINTED OUT THAT A JUDGE WHO HAS AN INTEREST IN A CASE IS NOT DEPRIVED OF JURISDICTION. NOR DOES MALICE OR CORRUPTION DEPRIVE A JUDGE OF ALL JURISDICTION. ID.

THEREFORE, DISMISSAL OF WELLS CLAIMS AGAINST JUDGE BROWN WOULD HAVE BEEN APPROPRIATE BECAUSE RELIEF FOR THESE CLAIMS CANNOT BE GRANTED IN FEDERAL COURT. HIS CLAIM THAT JUDGE BROWN IGNORED THE

THE BANKRUPTCY COURT IS WITHOUT SUBSTANTIVE MERIT BECAUSE THE BANKRUPTCY LAW IN EFFECT DURING THE STATE TRIAL PROVIDED THAT A DISCHARGE IN BANKRUPTCY HAD NO EFFECT ON ALIMONY DUE OR FOR MAINTENANCE OR SUPPORT OF A WIFE. 11 U.S.C. 35(A)(7). THEREFORE, WE AFFIRM THE DISMISSAL OF ALL OF THE CLAIMS AGAINST JUDGE BROWN.

WELLS' ALLEGATIONS AGAINST THE OTHER DEFENDANTS BASED ON VIOLATIONS OF FEDERAL LAW ARE SO PATENTLY LACKING IN MERIT THAT IT WAS PROPER FOR THE DISTRICT COURT TO CONSIDER THEM FRIVOLOUS AND DISMISS THE COMPLAINT FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION. SEE RAYMON V. ALVORD INDEPENDENT SCHOOL DISTRICT, 639 F. 2D 257 (5TH CIR. 1981); MILLER V. STANMORE, SUPRA, 636 F.2D AT 989. "MERELY CHARACTERIZING DEFENDANTS" CONDUCT AS CONSPIRATORIAL OR UNLAWFUL DOES NOT SET OUT ALLEGATIONS UPON WHICH RELIEF CAN BE

GRANTED UNDER THE CIVIL RIGHTS ACT. HILL V. MCCLELLAN, 490 F.2D 859, 860 (5TH CIR. 1974) (PER CURIAM), OVERRULED ON OTHER GROUNDS IN SPARKS V. DUVAL COUNTY RANCH CO., 604 F.2D 976, (5TH CIR. 1979)(EN BANC) AFF'D SUB NOM DENNIS V. SPARKS, ____ U.S. _____, 101 S.CT. 183, 66 L.ED.2D 185 (1980).

FOR THESE REASONS THE JUDGMENT IS AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

NO. 80-2193 (FILED JUN 18, 1981)

WARREN G. WELLS, SR., PLAINTIFF-APPELLANT,

VERSUS

SIDNEY J. BROWN, ET AL, DEFENDANTS-APPELLEES

- - - - - - - -

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

- - - - - - - -

ON PETITION FOR REHEARING
(JUNE 18, 1981)

BEFORE GEE, RUBIN AND RANDALL, CIRCUIT JUDGES.

PER CURIAM:

IT IS ORDERED THAT THE PETITION FOR PANEL REHEARING FILED IN THE ABOVE ENTITLED AND NUMBERED CAUSE BE AND THE SAME IS HEREBY, DENIED, WITHOUT PREJUDICE TO THE PENDING MOTION FOR AN EXTENSION OF TIME TO FILE AN APPLICATION FOR REHEARING EN BANC.

ENTERED FOR THE COURT:

/S/ALVIN B. RUBIN
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

(FILED
JUL 28,1981)

NO.80-2193

WARREN G. WELLS, SR.,PLAINTIFF-APPELLANT,

VERSUS

SIDNEY J. BROWN,ET AL,DEFENDANTS-APPELLEES

- - - - - - - -

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

- - - - - - - -

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(OPINION MAY 20, 1981, 5 CIR. 198_,__F2D__

(JULY 28, 1981)

BEFORE GEE, RUBIN AND RANDALL, CIRCUIT JUDGES.

PER CURIAM:

(X) THE PETITION FOR REHEARING IS DENIED AND NO MEMBER OF THIS PANEL NOR JUDGE OF THIS ADMINISTRATIVE UNIT IN REGULAR ACTIVE SERVICE HAVING REQUESTED THAT THE COURT BE POLLED ON REHEARING EN BANC (RULE 35, FEDERAL RULES OF APPELLATE PROCEDURE; LOCAL FIFTH CIRCUIT RULE 16; FIFTH CIRCUIT JUDICIAL COUNCIL RESOLUTION OF JANUARY 14, 1981), THE SUGGESTION FOR REHEARING EN BANC IS DENIED.

* *

(INAPPLICABLE OR PRINTED ITEMS NOT CHECKED OMITTED)

ENTERED FOR THE COURT:

/S/ALVIN B. RUBIN
UNITED STATES CIRCUIT JUDGE

CONSTITUTION OF THE UNITED STATES

ARTICLE VI.

"THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF;...SHALL BE THE SUPREME LAW OF THE LAND; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING..."

AMENDMENTS

ARTICLE I.

"CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH..."

ARTICLE IV.

"THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED..."

ARTICLE VII.

"IN SUITS AT COMMON LAW, WHERE THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED... "

ARTICLE VIII.

"EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.."

ARTICLE XIV.

"...NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS..."

CONSTITUTION OF THE STATE OF TEXAS

ARTICLE I.

BILL OF RIGHTS

"3. EQUAL RIGHTS
SECTION 3. ALL FREE MEN, WHEN THEY FORM A SOCIAL COMPACT, HAVE EQUAL RIGHTS, AND NO MAN, OR SET OF MEN, IS ENTITLED TO EXCLUSIVE SEPARATE PUBLIC EMOLUMENTS, OR PRIVILEGES, BUT IN CONSIDERATION OF PUBLIC SERVICES."

"3A. EQUALITY UNDER THE LAW
SECTION 3A. EQUALITY UNDER THE LAW SHALL NOT BE DENIED OR ABRIDGED BECAUSE OF SEX, RACE, COLOR, CREED, OR NATIONAL ORIGIN. THIS AMENDMENT IS SELF-OPERATIVE."

"4. RELIGIOUS TESTS
SECTION 4. NO RELIGIOUS TEST SHALL EVER BE REQUIRED AS A QUALIFICATION TO ANY OFFICE, OR PUBLIC TRUST, IN THIS STATE; NOR SHALL ANY ONE BE EXCLUDED FROM HOLDING OFFICE ON ACCOUNT OF HIS RELIGIOUS SENTIMENTS, PROVIDED HE ACKNOWLEDGE THE EXISTENCE OF A SUPREME BEING."

"6. FREEDOM OF WORSHIP
SECTION 6. ALL MEN HAVE A NATURAL AND INDEFEASIBLE RIGHT TO WORSHIP ALMIGHTY GOD ACCORDING TO THE DICTATES OF THEIR OWN CONSCIENCES. NO MAN WHALL BE COMPELLED TO ATTEND, ERECT OR SUPPORT ANY PLACE OF WORSHIP, OR TO MAINTAIN ANY MINISTRY AGAINST HIS CONSENT. NO HUMAN AUTHORITY OUGHT, IN ANY CASE WHATEVER, TO CONTROL OR INTERFERE WITH THE RIGHTS OR CONSCIENCE IN MATTERS OF RELIGION, AND NO PREFERENCE SHALL EVER BE GIVEN BY LAW TO ANY RELIGIOUS SOCIETY OR MODE OF WORSHIP."

"9. SEARCHES AND SEIZURES
SECTION 9. THE PEOPLE SHALL BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND POSSESSIONS, FROM ALL UNREASONABLE SEIZURES OR SEARCHES, AND NO WARRANT TO SEARCH ANY PLACE, OR TO SEIZE ANY PERSON OR THING, SHALL ISSUE WITHOUT DESCRIBING THEM AS NEAR AS MAY BE, NOR WITHOUT PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION."

"13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PURISHMENT; REMEDY BY DUE COURSE OF LAW
SECTION 13. EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL OR UNUSUAL PUNISHMENT INFLICTED ALL COURTS SHALL BE OPEN, AND EVERY PERSON FOR AN INJURY DONE HIM, IN HIS LANDS, GOODS, PERSON OR REPUTATION, SHALL HAVE REMEDY BY DUE COURSE OF LAW."

"15. RIGHT TO TRIAL BY JURY
SECTION 15. THE RIGHT OF TRIAL BY JURY SHALL REMAIN INVIOLATE. THE LEGISLATURE SHALL PASS SUCH LAWS AS MAY BE NEEDED TO REGULATE THE SAME, AND TO MAINTAIN ITS PURITY AND EFFICIENCY. PROVIDED,..."

"19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW
SECTION 19. NO CITIZEN OF THIS STATE SHALL BE DEPRIVED OF LIFE, LIBERTY, PROPERTY, PRIVILEGES OR IMMUNITIES, OR IN ANY MANNER DISFRANCHISED, EXCEPT BY THE DUE COURSE OF THE LAW OF THE LAND."

"29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLATE
SECTION 29. TO GUARD AGAINST TRANSGRESSIONS OF THE HIGH POWERS HEREIN DELEGATED WE DECLARE THAT EVERYTHING IN THIS 'BILL OF RIGHTS' IS EXCEPTED OUT OF THE GENERAL POWERS OF GOVERNMENT, AND SHALL FOREVER REMAIN INVIOLATE, AND ALL LAWS CONTRARY THERETO, OR TO THE FOLLOWING PROVISIONS, SHALL BE VOID."

ARTICLE V.

"DISQUALIFICATION OF JUDGES;...
SECTION 11. NO JUDGE SHALL SIT IN ANY CASE WHEREIN HE MAY BE INTERESTED...OR WHEN HE SHALL HAVE BEEN COUNSEL IN THE CASE..."

ARTICLE XVI.

"1.OFFICIAL OATH
SECTION 1. ...AND ALL OTHER ELECTED OFFICERS, BEFORE THEY ENTER UPON THE DUTIES OF THEIR OFFICES, SHALL TAKE THE FOLLOWING OATH OR AFFIRMATION:
'I,...DO SOLEMNLY SWEAR (OR AFFIRM), THAT I WILL....PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION AND LAWS OF THE UNITED STATES AND OF THIS STATE...
...AND ALL OTHER APPOINTED OFFICERS, BEFORE THEY ENTER UPON THE DUTIES OF THEIR OFFICES, SHALL TAKE THE FOLLOWING OATH OR AFFIRMATION: "

I,...DO SOLEMNLY SWEAR (OR AFFIRM), THAT I WILL....PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION AND LAWS OF THE UNITED STATES AND OF THIS STATE...

"50. HOMESTEAD; PROTECTION FROM FORCED SALE; MORTGAGES, TRUST DEEDS AND LIENS SECTION 50. THE HOMESTEAD OF A FAMILY, OR OF A SINGLE ADULT PERSON, SHALL BE AND IS HEREBY PROTECTED FROM FORCED SALE FOR THE PAYMENT OF ALL DEBTS EXCEPT FOR THE PURCHASE MONEY THEREOF, OR A PART OF SUCH PURCHASE MONEY, THE TAXES DUE THEREON, OR FOR WORK AND MATERIAL USED IN CONSTRUCTING IMPROVEMENTS THEREON, AND IN THIS LAST CASE ONLY WHEN THE WORK AND MATERIAL ARE CONTRACTED FOR IN WRITING, WITH THE CONSENT OF BOTH SPOUSES IN THE CASE OF A FAMILY HOMESTEAD, GIVEN IN THE SAME MANNER AS IS REQUIRED IN MAKING A SALE AND CONVEYANCE OF THE HOMESTEAD; NOR MAY THE OWNER OR CLAIMANT OF THE PROPERTY CLAIMED AS HOMESTEAD, IF MARRIED, SELL OR ABANDON THE HOMESTEAD WITHOUT THE CONSENT OF THE OTHER SPOUSE, GIVEN IN SUCH MANNER AS MAY BE PRESCRIBED BY LAW. NO MORTGAGE SHALL EVER BE VALID, EXCEPT FOR THE PURCHASE MONEY THEREFOR, OR IMPROVEMENTS MADE THEREON, AS HEREINBEFORE PROVIDED. WHETHER SUCH MORTGAGE, OR TRUST DEED, OR OTHER LIEN, SHALL HAVE BEEN CREATED BY THE OWNER ALONE, OR TOGETHER WITH HIS OR HER SPOUSE IN CASE THE OWNER IS MARRIED. ALL PRETENDED SLAES OF THE HOMESTEAD INVOLVING ANY CONDITION OF DEFEASANCE SHALL BE VOID. THIS AMENDMENT SHALL BECOME EFFECTIVE UPON ITS ADOPTION."

UNITED STATES CODE

28 USC 1331

" FEDERAL QUESTION; AMOUNT IN CONTROVERSY; COSTS

(A) THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS WHEREIN THE MATTER IN CONTROVERSY EXCEEDS THE SUM OR VALUE OF $10,000, EXCLUSIVE OF INTEREST AND COSTS, AND ARISES UNDER THE CONSTITUTION, LAWS, OR TREATIES OF THE UNITED STATES... "

28 USC 1343

" CIVIL RIGHTS AND ELECTIVE FRANCHISE

(A) THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ANY CIVIL ACTION AUTHORIZED BY LAW TO BE COMMENCED BY ANY PERSON:

(1) TO RECOVER DAMAGES FOR INJURY TO HIS PERSON OR PROPERTY, OR BECAUSE OF THE DEPRIVATION OF ANY RIGHT OR PRIVILEGES OF A CITIZEN OF THE UNITED STATES, BY ANY ACT DONE IN FURTHERANCE OF ANY CONSPIRACY MENTIONED IN SECTION 1985 OF TITLE 42;

(2) TO RECOVER DAMAGES FROM ANY PERSON WHO FAILS TO PREVENT OR TO AID IN PREVENTING ANY WRONGS MENTIONED IN SECTION 1985 OF TITLE 42 WHICH HE HAD KNOWLEDGE WERE ABOUT TO OCCUR AND POWER TO PREVENT;

(3) TO REDRESS THE DEPRIVATION, UNDER COLOR OF ANY STATE LAW, STATUTE, ORDINANCE, REGULATION, CUSTOM OR USAGE, OR ANY RIGHT, PRIVILEGE OR IMMUNITY SECURED BY THE CONSTITUTION OF THE UNITED STATES OR BY ANY ACT OF CONGRESS PROVIDING FOR EQUAL RIGHTS OF CITIZENS OR ALL PERSONS "

28 USC 1343 (CONTINUED)

"WITHIN THE JURISDICTION OF THE UNITED STATES;

(4) TO RECOVER DAMAGES OR TO SECURE EQUITABLE OR OTHER RELIEF UNDER ANY ACT OF CONGRESS PROVIDING FOR THE PROTECTION OF CIVIL RIGHTS..."

28 USC 1334

"BANKRUPTCY MATTERS AND PROCEEDINGS
THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION, EXCLUSIVE OF THE COURTS OF THE STATES, OF ALL MATTERS AND PROCEEDING IN BANKRUTPCY.."

42 USC 1983

"CIVIL ACTION FOR DEPRIVATION OF RIGHTS
EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY... SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES...TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY OR OTHER PROPER PROCEEDING FOR REDRESS.."

42 USC 1985

"(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS OR JUROR.

...OR IF TWO OR MORE PERSONS IN ANY STATE OR TERRITORY CONSPIRE,...FOR THE PURPOSE OF DEPRIVING, EITHER DIRECTLY OR INDIRECTLY, ANY PERSON OR CLASS OF PERSONS OF THE EQUAL PROTECTION OF THE LAWS, OR INJURE HIM OR HIS PROPERTY FOR LAWFULLY ENFORCING, OR ATTEMPTING "

42 USC 1985 (CONTINUED)

"TO ENFORCE, THE RIGHT OF ANY PERSON, OR CLASS OF PERSONS, TO THE EQUAL PROTECTION OF THE LAWS;

(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES.

IF TWO OR MORE PERSONS IN ANY STATE OR TERRITORY CONSPIRE,...FOR THE PURPOSE OF DEPRIVING, EITHER DIRECTLY OR INDIRECTLY, ANY PERSON OR CLASS OF PERSONS OF THE EQUAL PROTECTION OF THE LAWS, OR OF EQUAL PRIVILEGES AND IMMUNITIES UNDER THE LAWS, OR FOR THE PURPOSE OF PREVENTING OR HINDERING THE CONSTITUTED AUTHORITIES OF ANY STATE OR TERRITORY FROM GIVING OR SECURING TO ALL PERSONS WITHIN SUCH STATE OR TERRITORY THE EQUAL PROTECTION OF THE LAWS;...THE PARTY SO INJURED OR DEPRIVED MAY HAVE AN ACTION FOR THE RECOVERY AGAINST ANY ONE OR MORE OF THE CONSPIRATORS."

28 USC 2201

"CREATION OF REMEDY

IN ANY CASE OF ACTUAL CONTROVERSY WITHIN ITS JURISDICTION,...ANY COURT OF THE UNITED STATES, UPON THE FILING OF AN APPROPRIATE PLEADING, MAY DECLARE THE RIGHTS AND OTHER LEGAL RELATIONS OF ANY INTERESTED PARTY SEEKING SUCH DECLARATION WHETHER OR NOT FURTHER RELIEF IS OR COULD BE SOUGHT. ANY SUCH DECLARATION SHALL HAVE THE FORCE AND EFFECT OF A FINAL JUDGMENT OR DECREE AND SHALL BE REVIEWABLE AS SUCH..."

28 USC 2202

"FURTHER RELIEF

FURTHER NECESSARY OR PROPER RELIEF BASED ON A DECLARATORY JUDGMENT OR DECREE MAY"

28 USC 2202 (CONTINUED)

" BE GRANTED, AFTER REASONABLE NOTICE AND HEARING, AGAINST ANY ADVERSE PARTY WHOSE RIGHTS HAVE BEEN DETERMINED BY SUCH JUDGMENT..."

TEXAS STATUTES

TEXAS FAMILY CODE

SECTION 3.59.
" TEMPORARY SUPPORT
AFTER A PETITION FOR DIVORCE OR ANNULMENT IS FILED, THE JUDGE, AFTER DUE NOTICE MAY ORDER PAYMENTS FOR THE SUPPORT OF THE WIFE OR FOR THE SUPPORT OF THE HUSBAND, IF HE IS UNABLE TO SUPPORT HIMSELF, UNTIL A FINAL DECREE IS ENTERED."

VERNON'S ANNOTATED TEXAS STATUTES

ARTICLE 1911A. CONTEMPT...PENALTIES
. . . . . .

SECTION 2.
"(A) EVERY COURT OTHER THAN A JUSTICE COURT OR MUNICIPAL COURT MAY PUNISH BY A FINE OR NOT MORE THAN $500,..."

ARTICLE 4412B.
"DEFENSE OF DISTRICT JUDGE, GRAND JUROR OR COMMISSIONER
(A) THE ATTORNEY GENERAL OF TEXAS IS RESPONSIBLE FOR DEFENDING A STATE DISTRICT JUDGE IN ANY ACTION OR SUIT IN THE FEDERAL COURTS IN WHICH THE JUDGE IS A DEFENDANT BECAUSE OF HIS OFFICE AS DISTRICT JUDGE IF THE DISTRICT JUDGE REQUESTS THE ATTORNEY GENERAL'S ASSISTANCE IN THE DEFENSE OF THE SUIT."

FEDERAL RULES OF CIVIL PROCEDURE

RULE 8. GENERAL RULES OF PLEADING.

"(A) CLAIMS FOR RELIF. A PLEADING WHICH SETS FORTH A CLAIM FOR RELIF, WHETHER AN ORIGINAL CLAIM, COUNTERCLAIM, CROSS CLAIM OR THIRD-PARTY CLAIM, SHALL CONTAIN (1) A SHORT AND PLAIN STATEMENT OF THE GROUNDS UPON WHICH THE COURT'S JURISDICTION DEPENDS,....(2) A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF, AND (3) A DEMAND FOR JUDGMENT FOR THE RELIEF TO WHICH HE DEEMS HIMSELF ENTITLED. RELIEF IN THE ALTERNATIVE OR OF SEVERAL DIFFERENT TYPES MAY BE DEMANDED."

"(B) DEFENSES; FORM OF DENIALS. A PARTY SHALL STATE IN SHORT AND PLAIN TERMS HIS DEFENSES TO EACH CLAIM ASSERTED AND SHALL ADMIT OR DENY THE AVERMENTS UPON WHICH THE ADVERSE PARTY RELIES. IF HE IS WITHOUT KNOWLEDGE OR INFORMATION SUFFICIENT TO FORM A BELIEF AS TO THE TRUTH OF AN AVERMENT, HE SHALL SO STATE AND THIS HAS THE EFFECT OF A DENIAL. DENIALS SHALL FAIRLY MEET THE SUBSTANCE OF THE AVERMENTS DENIED WHEN A PLEADER INTENDS IN GOOD FAITH TO DENY ONLY A PART OR A QUALIFICATION OF AN AVERMENT, HE SHALL SPECIFY SO MUCH OF IT AS IS TRUE AND MATERIAL AND SHALL DENY ONLY THE REMAINDER. UNLESS THE PLEADER INTENDS IN GOOD FAITH TO CONTROVERT ALL THE AVERMENTS OF THE PRECEDING PLEADING, HE MAY MAKE HIS DENIALS AS SPECIFIC DENIAL OF DESIGNATED AVERMENTS OR PARAGRAPHS, OR HE MAY GENERALLY DENY ALL THE AVERMENTS EXCEPT SUCH DESIGNATED AVERMENTS OR PARAGRAPHS AS HE EXPRESSLY ADMITS; BUT, WHEN HE DOES SO INTEND TO CONTROVERT ALL ITS AVERMENTS, INCLUDING AVERMENTS OF THE"

RULE 8 (CONTINUED)
"GROUNDS UPON WHICH THE COURT'S JURISDICTION DEPENDS, HE MAY DO SO BY GENERAL DENIAL SUBJECT TO THE OBLIGATIONS SET FORTH IN RULE 11."

"(C) AFFIRMATIVE DEFENSES. IN PLEADING TO A PRECEDING PLEADING, A PARTY SHALL SET FORTH AFFIRMATIVELY ACCORD AND SATISFACTION, ARBITRATION AND AWARD, ASSUMPTION OF RISK, CONTRIBUTORY NEGLIGENCE, DISCHARGE IN BANKRUPTCY, DURESS, ESTOPPEL, FAILURE OF CONSIDERATION, FRAUD, ILLEGALITY, INJURY BY FELLOW SERVANT, LACHES, LICENSE, PAYMENT, RELEASE, RES JUDICATA, STATUTE OF FRAUDS, STATUTE OF LIMITATIONS, WAIVER, AND ANY OTHER MATTER CONSTITUTING AN AVOIDANCE OR AFFIRMATIVE DEFENSE. WHEN A PARTY HAS MISTAKENLY DESIGNATED A DEFENSE AS A COUNTERCLAIM OR A COUNTERCLAIM AS A DEFENSE, THE COURT ON TERMS, IF JUSTICE SO REQUIRES, SHALL TREAT THE PLEADING AS IF THERE HAD BEEN A PROPER DESIGNATION."

"(D) EFFECT OF FAILURE TO DENY. AVERMENTS IN A PLEADING TO WHICH A RESPONSIVE PLEADING IS REQUIRED, OTHER THAN THOSE AS TO THE AMOUNT OF DAMAGE, ARE ADMITTED WHEN NOT DENIED IN THE RESPONSIVE PLEADING. AVERMENTS IN A PLEADING TO WHICH NO RESPONSIVE PLEADING IS REQUIRED OR PERMITTED SHALL BE TAKEN AS DENIED OR AVOIDED."

"(E) PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

(1) EACH AVERMENT OF A PLEADING SHALL BE SIMPLE, CONCISE, AND DIRECT. NO TECHNICAL FORMS OF PLEADING OR MOTIONS ARE REQUIRED.

(2) A PARTY MAY SET FORTH TWO OR MORE STATEMENTS OF A CLAIM OR DEFENSE"

RULE 8 (CONTINUED)

"ALTERNATIVELY OR HYPOTHEICALLY, EITHER IN ONE COUNT OR DEFENSE OR IN SEPARATE COUNTS OR DEFENSES. WHEN TWO OR MORE STATEMENTS ARE MADE IN THE ALTERNATIVE AND ONE OF THEM IF MADE INDEPENDENTLY WOULD BE SUFFICIENT, THE PLEADING IS NOT MADE INSUFFICIENT BY THE INSUFFICIENCY OF ONE OR MORE OF THE ALTERNATIVE STATEMENTS. A PARTY MAY ALSO STATE AS MANY SEPARATE CLAIMS OR DEFENSES AS HE HAS REGARDLESS OF CONSISTENCY AND WHETHER BASED ON LEGAL, EQUITABLE, OR MARITIME GRONDS. ALL STATEMENTS SHALL BE MADE SUBJECT TO THE OBLIGATIONS SET FORTH IN RULE 11.

"(F) CONSTRUCTION OF PLEADINGS. ALL PLEADINGS SHALL BE SO CONSTRUED AS TO DO SUBSTANTIAL JUSTICE."

RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED--BY PLEADING OR MOTION--MOTION FOR JUDGMENT ON PLEADINGS.

"(A) WHEN PRESENTED. A DEFENDANT SHALL SERVE HIS ANSWER WITHIN 20 DAYS AFTER THE SERVICE OF THE SUMMONS AND COMPLAINT UPON HIM,..."

"(B) HOW PRESENTED. EVERY DEFENSE, IN LAW OR FACT, TO A CLAIM FOR RELIEF IN ANY PLEADING, WHETHER A CLAIM, COUNTERCLAIM, CROSS-ACTION, OR THIRD-PARTY CLAIM, SHALL BE ASSERTED IN THE RESPONSIVE PLEADING THERETO IF ONE IS REQUIRED, EXCEPT THE FOLLOWING DEFENSES MAY AT THE OPTION OF THE PLEADER BE MADE BY MOTION: (1) LACK OF JURISDICTION OVER THE SUBJECT MATTER, (2) LACK OF JURISDICTION OVER THE PERSON, (3) IMPROPER VENUE, (4) INSUFFICIENCY OF PROCESS (5) INSUFFICIENCY OF SERVICE OF"

RULE 12 (CONTINUED)

"PROCESS, (6) FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, (7) FAILURE TO JOIN A PARTY UNDER RULE 19. A MOTION MAKING ANY OF THESE DEFENSES SHALL BE MADE BEFORE PLEADING IF A FURTHER PLEADING IS PERMITTED. NO DEFENSE OR OBJECTION IS WAIVED BY BEING JOINED WITH ONE OR MORE OTHER DEFENSES OR OBJECTIONS IN A RESPONSIVE PLEADING OR MOTION. IF A PLEADING SETS FORTH A CLAIM FOR RELIEF TO WHICH THE ADVERSE PARTY IS NOT REQUIRED TO SERVE A RESPONSIVE PLEADING, HE MAY ASSERT AT THE TRIAL ANY DEFENSE IN LAW OR FACT TO THAT CLAIM FOR RELIEF. IF, ON A MOTION ASSERTING THE DEFENSE NUMBERED (6) TO DISMISS FOR FAILURE OF THE PLEADING TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, MATTERS OUTSIDE THE PLEADING ARE PRESENTED TO AND NOT EXCLUDED BY THE COURT, THE MOTION SHALL BE TREATED AS ONE FOR SUMMARY JUDGMENT AND DISPOSED OF AS PROVIDED IN RULE 56."

(C). . . .

(D). . . .

(E)MOTION FOR MORE DEFINITE STATEMENT. IF A PLEADING TO WHICH A RESPONSIVE PLEADING IS PERMITTED IS SO VAGUE OR AMBIGUOUS THAT A PARTY CANNOT REASONABLY BE REQUIRED TO FRAME A RESPONSIVE PLEADING, HE MAY MOVE FOR A MORE DEFINITE STATEMENT BEFORE INTERPOSING HIS RESPONSIVE PLEADING. THE MOTION SHALL POINT OUT THE DEFECTS COMPLAINED OF AND THE DETAILS DESIRED. IF THE MOTION IS GRANTED AND THE ORDER OF THE COURT IS NOT OBEYED WITHIN 10 DAYS AFTER NOTICE OF THE ORDER OR WITHIN SUCH OTHER TIME THE COURT MAY FIX, THE COURT MAY STRIKE THE PLEADING TO WHICH THE MOTION WAS DIRECTED OR MAKE SUCH ORDER AS IT DEEMS JUST."

AFFIDAVIT OF SERVICE

THE FOREGOING PETITION FOR WRIT CERTIORARI HAS BEEN SERVED BY PRE-PAID U. S. MAIL ON THE INTERESTED PARTIES, OR THEIR ATTORNEYS ON THIS 14th DAY OF SEPTEMBER 1981 AS FOLLOWS:

JAMES P. ALLISON
ASSISTANT ATTORNEY GENERAL
STATE OF TEXAS
PO BOX 12548
AUSTIN, TEXAS 78711
(ATTORNEY FOR SIDNEY J. BROWN)

LOGENE L. FOSTER, PRO SE
PO DRAWER 618
SUGARLAND, TEXAS 77478

ROBERT E. MORSE, JR.
VINSON & ELKINS
2110 FIRST CITY NAT'L BANK BLDG
HOUSTON, TEXAS 77002
(ATTORNEY FOR JAMES S. WHITWORTH)

PAUL B. ROSEN
2500 WEST LOOP SOUTH, SUITE 590
HOUSTON, TEXAS 77027
(ATTORNEY FOR E.J. MEAUX AND IRENE WLECZYK

SAM DAWKINS, JR.
1306 FIRST CITY NAT'L BANK BLDG.
HOUSTON, TEXAS 77002
(ATTORNEY FOR C.D. AND BETTY McDOWELL)

DOW H. HEARD
1300 FIRST CITY NAT'L BANK BLDG
HOUSTON, TEXAS 77002
(ATTORNEY FOR LINCOLN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SPOKANE, WASHINGTON)

MARY WELLS, PRO SE
6776 SOUTHWEST FREEWAY
HOUSTON, TEXAS 77081

WARREN G. WELLS, SR., PRO SE
PO BOX 36552
HOUSTON, TEXAS 77236-6552

SUBSCRIBED AND SWORN TO BEFORE ME THIS 14th DAY OF SEPTEMBER 1981 AS BEING TRUE AND CORRECT.

NOTARY PUBLIC STATE OF TEXAS

HELEN DAVIS, NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, MY COMMISSION EXPIRES JANUARY 18, 1985